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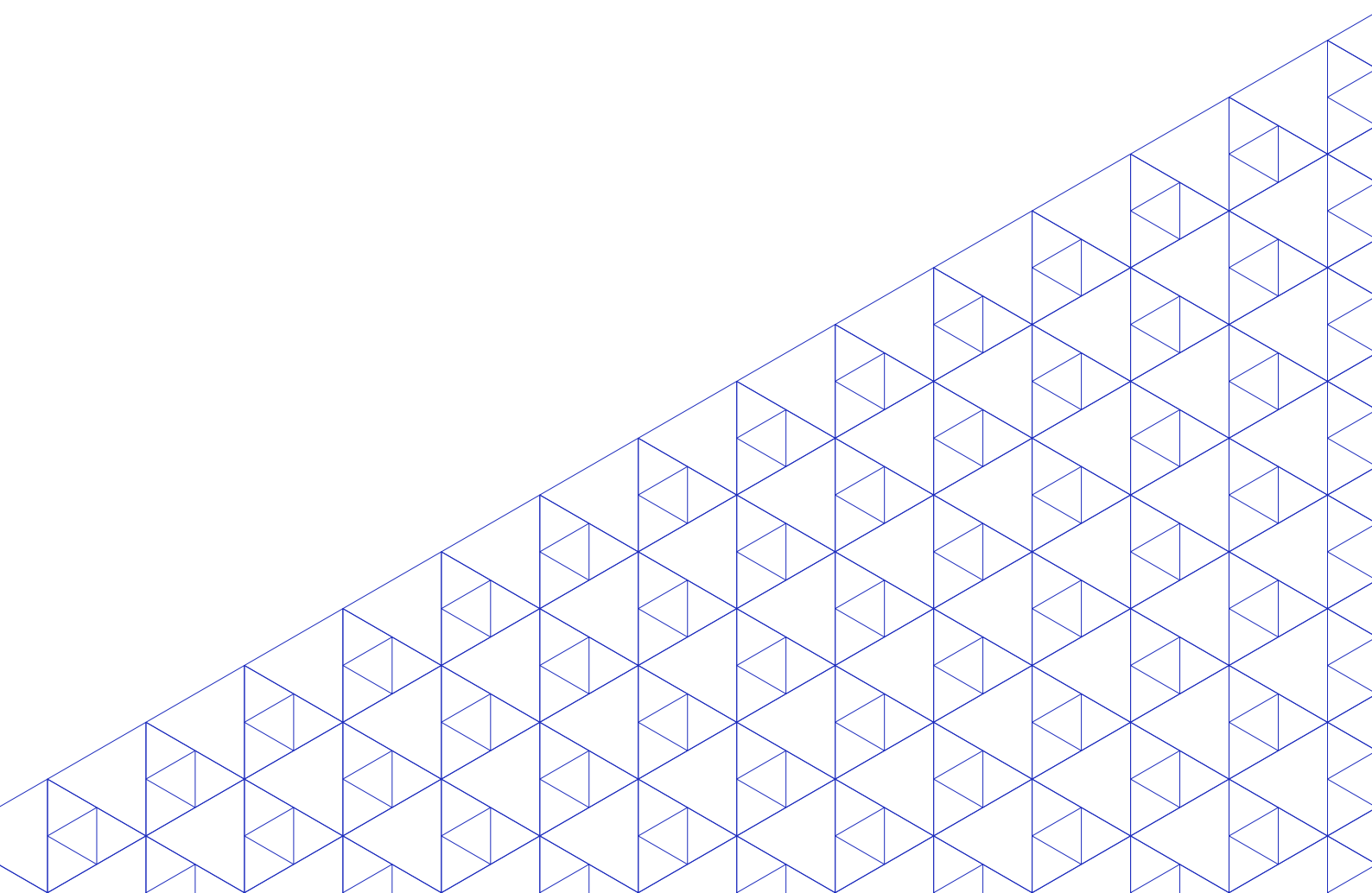


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► "System needs update": Upgrading protection against cyberbullying and ICT-enabled violence and harassment in the world of work

► **Authors** / Valerio De Stefano, Ilda Durri, Charalampos Stylogiannis, Mathias Wouters





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► Abstract

The term ‘cyberbullying’ has been used to describe aggressive conducts carried out through information and communication technologies (ICT), and can involve picture/video clips, emails, or social network sites, among others.

Cyberbullying in the world of work is a relatively recent and unexplored phenomenon, despite the pervasive use of ICT in today’s work environments and arrangements. The paper seeks to start filling this void, also in response to the newly adopted ILO Violence and Harassment Convention, 2019 (No. 190), and accompanying Recommendation (No. 206), that include in their scope violence and harassment occurring also “through work-related communications, including those enabled by information and communication technologies”.

This paper examines legal sources around cyberbullying in the world of work; reviews measures adopted across countries to counter bullying and discusses how they could be used to also address cyberbullying. It concludes with preliminary suggestions on possible ways to counter cyberbullying.

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► Introduction

The negative implications of bullying on victims are well documented in literature (see, for instance, P. Smith et al., 2006), and many countries have attempted to address this issue through a wide range of regulatory instruments. Nonetheless, bullying persists in workplaces, schoolyards, and various other public and private spaces, and it is now also exacerbated by the use of information and communication technologies (hereinafter: ICT).

ICT offer potent means for perpetrators to target potential victims. These technologies can involve text messages, picture/video clips, phone calls, emails, chat-rooms, websites/online fora, social network sites, etc. (R. Dredge et al., 2014). The term that has been used most often to describe aggressive conducts, including bullying, carried out through ICT is “cyberbullying”. As we highlight in the course of this study, cyberbullying is a particularly pernicious phenomenon, since it can cause significant negative consequences on victims with “just a few clicks” (M. Fertik and D. Thompson, 2010, p. 2). Most of the research on cyberbullying, so far, involves adolescents and educational settings (for instance, P. Smith, 2016). Fewer studies, instead, have been devoted to cyberbullying in the world of work. The increasing and pervasive use of ICT in modern work environments and arrangements, nonetheless, calls for much more attention to the implications of cyberbullying in this context.

Notably, the instruments on violence and harassment that have recently been adopted by the ILO pay heed to these developments. Article 3 of the Violence and Harassment Convention, 2019 (No. 190) understands violence and harassment¹ in the world of work as “occurring in the course of, linked with or arising out of work” also “(d) through work-related communications, including those enabled by information and communication technologies”. The use of ICT to conduct unacceptable behaviour is, then, included in the scope of the instruments as long as this concerns “work-related communications”. Moreover, Article 4 mandates to adopt “an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work”, which should also “take into account violence and harassment involving third parties, where applicable”.² The instruments, therefore, arguably cover work-related communication between workers (broadly understood as discussed below), employers, and third parties.

As we point out in the course of the study, a broad understanding of the “world of work” is essential to adequately address all instances of cyberbullying, which, by its very nature, can occur anytime and anywhere. In addition to this broad understanding, Articles 2 and 4 of Convention No. 190 indicate that all individuals who are involved in a work or professional scenario are potentially addressed by the instrument. The Convention, therefore, has both a broad spatial and personal scope. It protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. Third parties such as clients, customers, service providers, users, patients and members of the public should also be taken into account when devising measures to prevent and eliminate violence and harassment in the world of work.³ This study also espouses such a broad understanding and, therefore, it also adopts an inclusive view of the potential beneficiaries of measures against cyberbullying.

This means that workers, jobseekers, managers, supervisors, employers and third parties should all be protected against violence and harassment, including cyberbullying, in the world of work.⁴ As shown in the appendix, a high number of regulatory provisions concerning bullying and harassment pay regard

¹ Under the Violence and Harassment Convention, 2019 (No. 190), “the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment” (Article 1).

² Violence and Harassment Convention, 2019 (No. 190), Articles 3 and 4.

³ Violence and Harassment Convention, 2019 (No. 190), Articles 2 and 4; see also Violence and Harassment Recommendation, 2019 (No. 206), paragraph 8.

⁴ This has been acknowledged in ILO Report V(2). The report covers the replies and comments on the questionnaire of the preliminary report on ending violence and harassment in the world of work (Report V(1)). “The Office notes that point 4(e) of the proposed Conclusions covers cyberbullying as a situation of violence and harassment that might occur through work-related communications enabled by information and communication technologies.” (ILO, 2018b, pp. 27-28).

to the implication of these phenomena on “human dignity”. A comparative analysis of national legislation in this area seems to confirm that harassment, bullying and similar forms of unacceptable behaviours can be seen as forms of “human rights violation or abuse”.⁵ As we argue below, this warrants that protective measures go beyond the traditional boundaries of employment regulation and, in particular, cover all workers, regardless of their contractual arrangement or employment status. This contribution thus aims at embracing the world of work in general. Literature and legislation, however, mainly focus on workers; hence, our analysis sometimes reflects such focus. Nonetheless, the study makes as many references as possible to employers and third parties and calls for further interdisciplinary studies to expand research in this area towards a broader personal scope.

The primary aim of this study is to examine legal sources around cyberbullying and other ICT-mediated aggressive conducts in the world of work. Our entry point was to understand how law-makers take ICT and its abuses into account when drafting measures against aggressive and unacceptable conducts. When undertaking this study, we realized the paucity of legal provisions concerning cyberbullying around the world as it is a relatively novel phenomenon. Therefore we thought it helpful to conduct our research by framing cyberbullying also against the background of legal provisions and case law that address conducts such as traditional bullying and harassment in the world of work (and their counterparts in non-English-speaking countries). We followed the same approach when reviewing the psycho-sociological literature to support our legal analysis. Our main interest was to examine whether this literature permits to understand how technology can influence and shape the traditional concepts of bullying and harassment in the world of work, the conducts of the perpetrators and the impact on victims and societies at large. It is not the aim of this study to be a general reference about these traditional conducts, let alone psychosocial risks at large. We advance conclusions regarding these conducts only if we see it useful also to address ICT-mediated conducts.

Another word of caution is needed concerning the ILO Convention concerning the elimination of violence and harassment in the world of work, 2019 (No. 190) and Recommendation concerning the elimination of violence and harassment in the world of work, 2019 (No. 206). These instruments were adopted by the International Labour Conference at its 108th session in June 2019 while this study was being prepared. Hence the reference to some of their provisions, as they were pertinent to the subjects of this study. This study is not aimed at providing a commentary to these newly-adopted ILO instruments whose scope is much broader than ICT-based unacceptable conducts.

Before examining national regulations, Chapter 1 engages in an analysis of the concepts of bullying and cyberbullying. It compares these phenomena to other forms of aggressive behaviours that affect the world of work to provide a sound descriptive definition of cyberbullying in this context. Chapter 2 explores the incidence of cyberbullying at work, by referring to statistics from different sectors, and also investigates the implications of cyberbullying on victims and other subjects, including enterprises. Chapter 3 examines various sources of anti-bullying measures found in different legal systems around the world. It then focuses on measures that explicitly target cyberbullying or other forms of ICT-enabled aggression. Chapter 4 gives account of several types of measures that have been used by different countries to counter bullying. Subsequently, it examines how existing anti-bullying measures can be used to address cyberbullying practices. Chapter 5 describes the findings of this research and draws preliminary conclusions about some of the measures that could be considered by law and policymakers, social partners and enterprises to tackle cyberbullying.

The primary focus of this study is therefore cyberbullying in the world of work, although, as observed, it also deals with other unacceptable behaviours, such as bullying and harassment and other conducts. As discussed in the box below, the definitions of these conducts, in law and social sciences, can materially overlap with the notion of cyberbullying. The box provides only some of the definitions that can describe these conducts. Moreover, the boundaries among them are not watertight – constitutive elements of these definitions can also be found in the definitions of other of these conducts under different sources and terms can also be used interchangeably (L. Sperry, 2009, p. 166). For instance, the definition of harassment under Alberta (Canada)’s Occupational Health and Safety Act includes “any single incident or repeated incidents of [...] bullying”.

⁵ The quoted text is in the Preamble of Convention No. 190.

► **Box 1: Examples of definitions of unacceptable conducts in law and literature**

“Violence and harassment” in ILO Convention No. 190

Before examining definitions in legal and psycho-sociological sources, it is useful to recall that under Article 1 of the Violence and Harassment Convention, 2019 (No. 190), “the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”.

Harassment

In psychological literature, I. Grazina and J. Magalhães, (2012, p. 14) indicate: “moral harassment at work is connected with the continued exposition to negative and aggressive behaviors, of psychological nature, describing situations in which hostile behaviors directed systematically to one or more colleagues or subordinates, conduce to stigmatization and victimization of the targets of these behaviors.”

An example of a legal definition of harassment is provided under Alberta (Canada)’s Occupational Health and Safety Act. Harassment “means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation to a worker, or adversely affects the worker’s health and safety, and includes [...]”.

Bullying

According to organizational psychologist S. Einarsen, “bullying at work means harassing, offending, or socially excluding someone or negatively affecting someone’s work. In order for the label bullying (or mobbing) to be applied to a particular activity, interaction, or process, the bullying behaviour has to occur repeatedly and regularly (e.g. weekly) and over a period of time (e.g., about six months). Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of systematic negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal strength are in conflict” (S. Einarsen et al., 2011, p. 22).

Under the Fair Work Act 2009 in Australia, “a worker is bullied at work if: [...] (i) an individual; or (ii) a group of individuals; repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and (b) that behaviour creates a risk to health and safety.”

Mobbing

Psychologist Heinz Leymann is regarded to be the author who “introduced the concept of mobbing” in literature (D. Zapf, 1999, p. 70). According to him, “The scientific definition meant by the term “mobbing” [...] refers to a social interaction through which one individual (seldom more) is attacked by one or more (seldom more than four) individuals almost on a daily basis and for periods of many months, bringing the person into an almost helpless position with potentially high risk of expulsion” (H. Leymann 1998, p. 168).

Pursuant to article 4 of the Law on the Prohibition of Discrimination in Bosnia and Herzegovina, “mobbing shall be considered every form of non-physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee’s working conditions or professional status as a consequence.”

Stalking

According to social scientist L. Royakkers (2000), “[s]talking is a form of mental assault, in which the perpetrator repeatedly, unwantedly, and disruptively breaks into the life-world of the victim, with whom he has no relationship (or no longer has), with motives that are directly or indirectly traceable to the affective sphere. Moreover, the separated acts that make up the intrusion cannot by themselves cause the mental abuse, but do taken together (cumulative effect)” (L. Royakkers, 2000, p. 7).

The Washington Administrative Code grants leave, in specific circumstances, to employees who are victims of stalking.⁶ The definition of stalking is the same used in the Washington Criminal Code: “A person commits the crime of stalking if, [...] (a) [h]e or she intentionally and repeatedly harasses or repeatedly follows another person; and (b) [t]he person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. [...]”⁷

⁶ Section 296-135-010. Washington Administrative Code.

⁷ Section 9A. 46.110. Washington Criminal Code.

► 1 Definitions and understanding of cyberbullying

► Definitions in social sciences

What is (cyber)bullying?

There is no single definition of cyberbullying, or of bullying, which is internationally accepted. “Cyberbullying”, instead, continues to be used as an umbrella term for a range of aggressive behaviours that are perpetrated through ICT (J. Bailey, 2014). The absence of an established definition is, in fact, seen as problematic by some scholars (H. Hoel and D. Beale, 2006). Having regard to this, our working definition is based on established literature tackling the issue of bullying in the world of work. It refers to relevant research in social sciences, as well as on legal definitions found in national regulation.

In particular, we draw on the psychological and sociological literature on bullying. Some definitions from that literature have been referenced and relied upon by numerous sources, as we discuss below. Cyberbullying is not explicitly defined in this literature; it is, however, commonly considered an extension of bullying. Both bullying and cyberbullying are seen, in fact, as forms of, or linked to, aggressive behaviour (P. C. Rodkin and K. Fischer, 2012; L.R. Betts, 2016, p. 2). In the course of this study, we follow a similar approach – our understanding of cyberbullying shares several structural elements with traditional bullying.⁸

A definition of “bullying at work” that has gained considerable influence has been proposed by Einarsen et al. In these authors’ view, “bullying at work means harassing, offending, socially excluding someone or negatively affecting someone’s work tasks. In order for the label bullying (or mobbing) to be applied to a particular activity, interaction or process it has to occur repeatedly and regularly (e.g. weekly) and over a period of time (e.g. about six months). Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of systematic negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal ‘strength’ are in conflict” (S. Einarsen et al., 2011, p. 22; see also K. Lippel, 2010; L. Barmes, 2015; P. D’Cruz, 2015).

Several elements can be clearly identified in this definition: a certain degree of repetitiveness or persistence of the conducts; the fact that “exposure [to the behaviour] occurs over a long time-period” (M. B. Nielsen and S. Einarsen, 2018, p. 73) and an unequal power relation. These elements are all extensively discussed in the existing literature (see, for instance, C. Privitera and M. A. Campbell, 2009; C. Langos, 2012).

Concerning the element of repetition and duration, a crucial question is whether the perpetrators’ acts have to be repeated, or whether it suffices for the victims to be repeatedly exposed to their effects. In both cases, the exact frequency and duration needed for a certain behaviour to be considered bullying are arguably vague (L. Barmes, 2015, p. 14). The original reason to identify these elements in bullying was the need to differentiate it from “personal conflicts of a more episodic character” (M. Agervold, 2007, p. 165). This traditional view on bullying would not consider single events to constitute “bullying”, even if victims are repetitively confronted with the effects of that one incident.

⁸ For views that argue the contrary, according to which bullying and cyberbullying are fairly distinct, see for example Corcoran, L. et al., 2015. L. R. Betts (2016, p. 4) reports: “In particular, some authors argue that cyberbullying represents a distinct phenomenon which should be defined as such (e.g., Pieschl, Kuhlmann, & Prosch, 2015), whereas other authors advocate that cyberbullying is an extension of face-to-face bullying (e.g. Juvonen & Gross, 2008; Olweus, 2013) with researchers seeking to apply definitions of face-to-face bullying to cyberbullying (e.g. Calvete, Orue, Estévez, Villardon, & Padilla, 2010)”.

One-off events, however, can also significantly harm victims (P. D’Cruz, 2015, pp. 12-13). Some authors, thus, suggest that a singular event can in some cases be deemed bullying, having regard to its impact (R. Slonje et al., 2012, p. 245; S. Branch and J. Murray, 2015, p. 288). The consequences of the one-off event would have to be repeated regularly for a prolonged period (S. Einarsen et al., 2011, pp. 11-13).

The third element of the definition above implies the existence of an unequal power relationship between the victims and perpetrators. The imbalance of power as a defining feature, nevertheless, may be overlooked by victims of bullying, as indicated by the answers given to semi-structured interviews on the matter (R. Dredge et al., 2014, pp. 17-18). An imbalance of power can be due to the perpetrators’ characteristics, such as a physical advantage, social status and/or the vulnerability of the victim, related, for instance, to problems in communicating or ICT illiteracy (H. J. Thomas et al., 2015, p. 136). It is worth noting, however, that power imbalance is not necessarily a static fact. The victims might react to the bullying behaviour and might, for example, show resilience and reverse the power relationship, or might indeed be overwhelmed by the perpetrators’ acts, thereby finding it hard to react in the course of the bullying process. Even in situations of initial equal strength between two parties, bullying can occur when one party – the prospective victims – becomes defenceless in comparison to the perpetrators (S. Matthiesen and S. Einarsen, 2007, p. 735; S. Branch et al., 2013, p. 282; P. D’Cruz, 2015, pp. 11-12). Power imbalances, therefore, can fluctuate, making them also a problematic element to assess (P. Lutgen-Sandvik, 2006; E. Menesini et al., 2012, p. 459).

An additional element, not evident in the definition discussed above, is the intention to target the victim, which some scholars identify as an additional definitional criterion (P. Saunders et al., 2007, p. 345). Other studies, however, explicitly dismiss this criterion, as well as the need for an intention to harm, as parts of the definition of bullying (M.B. Nielsen and S. Einarsen, 2018, p. 73; P.C. Rodkin and K. Fischer, 2012, p. 624). Motives or reasons underlying the relevant behaviour can change in the course of the bullying process. They can also vary according to the specific environment in which they take place. The reasons behind bullying someone at work can, for instance, be different from the ones found in educational settings.⁹

In this respect, it is also worth noting that the potential victims may, of course, have different sensitivities. Victims can be distressed regardless of the bullies’ intent to harm and what might not be regarded as bullying by one individual can be perceived as bullying by another. As such, whether or not a specific act is apt to harass, offend, socially exclude or negatively affect the victim’s work is to be objectively approached. It suffices for the behaviour to have a foreseeable effect on the target. Someone might, therefore, perpetrate bullying unconsciously (S. Einarsen et al., 2011, p. 9), as long as the behaviour is knowingly directed at the victims. Objectively minor behaviours shall, consequently, not constitute bullying (S. Branch et al., 2013, p. 281). As already said, however, in general, intention to harm is not perceived as a key element in the literature on bullying in the world of work (S. Einarsen et al., 2011, p. 18).

► Box 2: The element of power imbalance in the world of work

Considering the extensive scholarship on power relations within the world of work (see, for instance, A. Supiot, 1994; D. Cabrelli and R. Zahn, 2017; H. Collins et al., 2018), any analysis of the nature of power imbalances as a condition of bullying becomes even more complicated in this context. It is, firstly, necessary to stress that workers can be harmed by internal perpetrators or by external perpetrators. Article 4 of the Violence and Harassment Convention acknowledges this, by referring to violence and harassment “involving third parties”.

External bullying can, for example, be experienced by persons who have extensive contact with the public, such as workers in call centres, doctors, or journalists (P. D’Cruz, 2016; Reporters sans Frontières, 2018). Workers can be bullied by clients, but also by subcontractors and their personnel, suppliers as well as other persons they may encounter because of their work. Importantly, workers can also be the perpetrators of bullying against those subjects.

⁹ Internal competition and difficulties in laying off employees have, for example, been mentioned as incentives for workplace bullying (D. Salin, 2003, p. 1218). Others identify working environments and destructive forms of leadership as factors that influence the incidence of bullying at work, or assert that “a conflict between superiors and subordinates is an important antecedent of bullying, and more so than organizational changes” (A. Skogstad et al., 2007, p. 84; see also L. J. Hauge et al., 2007, pp. 239-240).

Internally, perpetrators can bully horizontally against colleagues relatively at the same level, or vertically, against persons belonging to a different level within the company's hierarchy. With regard to bullying in the world of work, it is also crucial to remind that one constitutive element of employment relationships is the subordination of workers vis-à-vis employers. The corollary of this legal subordination is the right of the employer to make use of managerial prerogatives to direct, control, and discipline workers, directly or through supervisors

Given that employers, supervisors, managers, executives etc. are, in principle, allowed to exert managerial prerogatives, a serious complication lies in the use of bullying as a tool for managerial control (D. Beale and H. Hoel, 2011, pp. 9-13; P. D'Cruz, 2016, pp. 242-245). Some forms of micro-management could, for instance, also amount to bullying (CBI, p. 2). Although the interplay between management and bullying forms a challenging field of research, one study concluded that even "leadership styles seem to play an important but complex role in the bullying process" (H. Hoel et al., 2010, p. 453). This is a crucial issue also because, according to some studies, workers who are bullied by "leaders" tend to have more severe depressive symptoms (E. Török et al., 2016).

Some regulatory provisions reflect this issue. The legislation of Alberta (Canada), for instance, states that any reasonable conduct of an employer or supervisor in respect of the management of workers or a work site is excluded from the concept of "harassment".¹⁰ The (now repealed) South Australian Occupational Health, Safety and Welfare Act 1986, instead, identified some precise actions or decisions taken by the employer that could not be classified as bullying, at least under certain conditions.¹¹ Case law in France suggests, instead, that some management methods implemented by a superior may indeed constitute *harcèlement moral*.¹²

The subordination or socio-economic dependency of workers vis-à-vis their employers and supervisors is regarded in the literature as a possible source of imbalance of power (S. Einarsen et al., 2011, p. 15).

A more complex question is whether an "unequal power relationship" can also be present in either a horizontal relationship between co-workers or an upward vertical relationship, with workers perpetrating bullying against their supervisors.

A horizontal relationship between two co-workers is a relationship of two parties on an approximately equal footing. Some authors, however, observe: "bullying is not limited to vertical aggression from supervisors towards subordinates. As power imbalances can also be the consequence of other individual, situational or societal characteristics (cf. Cleveland & Kerst, 1993), the required power differences can also arise among peers" (D. Salin, 2003, p. 1216).

Furthermore, according to some authors, "upward bullying" is also a reality (M. S. Herscovis, 2011, p. 501; S. Branch and J. Murray, 2015, p. 289). This occurs when people target their work supervisors, and thus someone who, at least formally, is vested with more power because they rank higher in the firm's hierarchy.

An argument that substantiates this view could be that the unequal power relationship is not to be evaluated statically. This relationship, therefore, is not to be considered by looking at one single moment in time, and, instead, has to be determined throughout the bullying process, for instance taking into account situations when the victims become "weaker" as the acts of the perpetrators – or the results of those acts – continue to wear on them.

This dynamic interpretation given to the element of unequal power might prove particularly valuable in the world of work. Some studies show that workers who experience bullying may feel forced to leave their job (D. Zapf and C. Gross, 2001, pp. 514-515). The organization's interest in preserving the working environment free from bullying behaviour relates to both horizontal and vertical bullying. It is also worth mentioning that, sometimes, victims of bullying can retaliate by using cyber-means (A. König et al., 2010). In the end, it is therefore essential to stop the entire bullying process and its harmful effects throughout the enterprise. In this regard, attention should also be paid to the fact that managers,

¹⁰ Section 1 Occupational Health and Safety Act, SA 2017, c O-2.1.

¹¹ Section 55A South Australian Occupational Health, Safety and Welfare Act 1986, historical version 31 December 2012.

¹² Cour d'appel de Rennes, 5 avril 2019, n° 16/04389.

colleagues and trade union representatives can be biased against victims, “blaming [them] for their own misfortune” (S. Einarsen et al., 2011, p. 22). Since bullying processes tend to escalate, and as subordinates, supervisors and employers can be at the receiving end of such an escalating process of action and reaction, it is not suitable to construe the power imbalance in formal terms, i.e. related to the position of the perpetrators or victims in the hierarchy of the firm, instead of focusing on its factual dynamics.

What are the differences between bullying and cyberbullying?

Even though definitions of cyberbullying usually draw upon the same essential elements identified for bullying (P. Smith et al., 2006, p. 6; R. M. Kowalski et al., 2014, p. 1074; H. J. Thomas et al., 2015, p. 137), the use of ICT may still alter some essential features and implications of traditional bullying (R. Dredge et al., 2014).

One element that is affected considerably is repetition. Some authors argue that repetition manifests itself differently in the case of cyberbullying (L.R. Betts, 2016, pp. 38-39). The repetitiveness of acts of cyberbullying is more difficult to ascertain. ICT, for instance, may allow individuals to repeatedly access the aggressive content that has been posted online in one sole occasion. One act could also confront the victims repeatedly without the perpetrators having necessarily intended such an outcome. In such instances, other individuals, instead of the primary perpetrator, might have caused the harmful conduct to be repetitive (D. B. Sugarman and T. Willoughby, 2013, p. 2; L. R. Betts, 2016, p. 38). This, in turn, may make “repetition” less reliable as a defining criterion for cyberbullying (E. Menesini et al., 2012, p. 459). If repetition is indeed seen as a proxy for severity (P.C. Rodkin and K. Fischer, 2012, pp. 624-625), then the unwanted reverberations of one act of cyberbullying should be considered as indicators of repetition. Such reverberations, which, for instance, can come in the form of re-tweets, shares, forwards, etc., can reach an enormous and uncontrollable audience (D. Kernaghan and J. Elwood, 2013). Related to this is the fact that, contrary to traditional bullying, records of cyberbullying may end up being unerasable in practice. In this respect, it has been argued that “direct cyberbullying involves a perpetrator repeatedly directing unwanted electronic communications to a victim” while “indirect cyberbullying involves directing a single or repeated unwanted electronic communications” (C. Langos, 2012, p. 288). Indirect cyberbullying requires the perpetrator to use “reasonably public areas of cyberspace” instead of private channels (C. Langos, 2012, p. 286). Direct cyberbullying, instead, would necessitate direct contact with the victims.

A second element that is affected is the “unequal power” between the victims and perpetrators. Technological savviness can result in a power imbalance (R. M. Kowalski et al., 2014, p. 1107). This is also true, according to some authors, for the possibility to bully anonymously (P.C. Rodkin and K. Fischer, 2012, p. 626; D. B. Sugarman and T. Willoughby, 2013, p. 2). Moreover, while, on the one hand, the use of ICT might exacerbate existing imbalances of power, on the other hand, it might also mitigate or reverse this imbalance. Indeed, supervisors, managers, or even employers can be victimized by persons or groups of persons who report to them, through the use of ICT means, particularly because they facilitate anonymous conducts.

Another remark concerns the reasons and drivers of cyberbullying behaviours. Social networks can, for example, offer “new arenas to harass, humiliate, or threaten” (D. B. Sugarman and T. Willoughby, 2013, p. 2), and coincidentally cyberbullying can serve as an “alternative medium” (C. Privitera and M. A. Campbell, 2009, p. 395) to help the perpetrators’ ends. Some studies, nevertheless, argue that cyberbullying is rather one new – unique – phenomenon, instead of merely an alternative iteration of bullying (A. Baroncelli and E. Ciucci, 2014, p. 813). For instance, this could be because “the reward for engaging in cyberbullying is often delayed (in contrast to face-to-face interactions), and this is anticipated to have an effect on how goals for these aggressive interactions are formed and pursued” (J.J. Dooley et al., 2009, 187).

Although some differences in the reasons and drivers of cyberbullying relative to bullying may exist, these differences should be taken with caution. It should not be neglected that perpetrators may attack the victims through both traditional and cyber-means (J. Raskauskas and A.D. Stoltz, 2007, p. 570; R. M. Kowalski et al., 2014, pp. 1123-1124), something that can have a particular bearing in work-related matters (I. Coyne et al., 2016), especially when it comes to internal bullying. This could be different for external bullying, where contact can be more casual, and chances may be lower for the behaviour to repeat itself. External perpetrators may also be less likely to know the actual personal identity of the victims.

Another critical feature of cyberbullying is the potential for an easier moral detachment of “cyberbullies” from the victim, than what would be the case for bullying. This view originates from the understanding that, to bully another, perpetrators go through certain psycho-cognitive processes. Those processes might not be entirely identical in case of bullying and cyberbullying.¹³ Moral disengagement is defined in the relevant literature as “the socio-cognitive process through which humans are able to harm others without having a bad conscience” (S. Wachs, 2012, p. 349). Some studies indicate that cyberbullies show even less remorse than traditional bullies (R. Slonje et al., 2012, p. 254), and that moral disengagement can be higher for cyberbullies than for traditional ones (S. Wachs, 2012, p. 350). In this regard, C. D. Pornari and J. Wood (2010, p. 89) observe: “It is likely that the anonymity, the distance from the victim, and the consequences of the harmful act do not cause so many negative feelings (e.g. guilt, shame, self-condemnation), and reduce the chance of empathizing with the victim”.

Although these studies concern children and adolescents, a similar dynamic may occur among adults. In comparison to traditional bullying, therefore, cyberbullying may lead to an increased emotional disconnection between the perpetrators and victims, since the perpetrators are not directly confronted with the victims’ reactions and emotions. Some authors refer to this phenomenon as an “online disinhibition effect”, which amounts to people saying and doing things “in cyberspace that they wouldn’t ordinarily say and do in the face-to-face world” (J. Suler, 2004, p. 321). As a result, less empathy and remorse would be shown and perpetrators would say and do things online that they would not say or do offline (T. Aricak et al., 2008, p. 256; R. M. Kowalski et al., 2014, p. 1107).

An indicative example of such behaviours can be traced in abusive tweets sent to members of national parliaments (MPs), especially when it comes to women MPs. It has been noted: “while online abuse is certainly not limited to women in the public eye, women politicians face an extraordinary amount of abuse on social media” (A. Dhoria, 2017). Online abuse against women can thus be facilitated by the use of ICT and by the emotional detachment between the victims and the perpetrators that can come with it. Interviews with women MPs also highlight the severe psychological impact of online abuse (Amnesty International, 2018).

Besides, contrary to popular belief, the Internet is not a neutral place (S.U. Noble, 2018). Social network timelines tend to reflect individuals’ opinions and biases, and as such, reinforce stereotypes (echo-chambers). This may exacerbate the propensity of pursuing aggressive conducts. Such conducts, moreover, are not limited to verbal abuses. In a case in Australia, for instance, one of the actions that the Fair Work Commission considered, in issuing an order to stop some bullying conducts at work, was the perpetrator unfriending the victim on Facebook (J. Pearlman, 2015).¹⁴

Cyberbullying, of course, is not limited to conducts occurring on social media. For instance, a study about Australian manufacturing workers found that “the most frequently reported negative act via modern technology was “someone withholding information” by email [...] and/or by telephone [...]”. Some 37.5 per cent of the respondents also reported having been exposed to an unmanageable workload by email or having being affected by the spread of gossip by telephone as instances of cyberbullying they experienced (C. Privitera and M. A. Campbell, 2009, p. 398).

This propensity is also linked to the fact that cyberbullying can lead to extensive anonymous bullying (J. J. Dooley et al., 2009, p. 184). Research on adolescents has shown that the percentage of victims of cyberbullying that knows the identity of the perpetrators varies from 43 per cent to 80 per cent (W. Cassidy et al., 2013, p. 579). Such potential for anonymous bullying is problematic because research indicates that anonymity is a risk factor for future cyberbullying behaviours (C. P. Barlett and D.A. Gentile, 2016, p. 179). This is possibly due to a “misgiven” sense of impunity that comes with anonymity – a sense of impunity that is linked to the belief that it becomes more difficult to identify the perpetrators for both the victims and law enforcement through cyberbullying (N. H. Goodno, 2007, p. 131; J. D. Lipton, 2011, p. 1114). Certain digital communication tools like Snapchat, where messages are temporary by default, might even exacerbate this sense of impunity.

¹³ For instance, in a specific study, a sample of children showed bullies to have normal levels of moral competence, i.e. knowing right from wrong, but a deficiency in moral compassion, i.e. emotional awareness and conscience concerning moral transgression, with higher levels of moral disengagement (G. Gini et al., 2011, pp. 603 and 607).

¹⁴ See Fair Work Commission, [2015] FWC 6556.

Finally, another factor that plays into this feeling of impunity is the fact that an online environment may have fewer direct bystanders than an offline environment has (S. Wachs, 2012, p. 356). This can be consequential for the victims. Existing literature presents mixed evidence on the role of bystanders. On the one hand, the presence of bystanders can stimulate bullying; on the other hand, bystanders can also counter it (C. Salmivalli, 2014, p. 286). It is, therefore, all the more important to reduce the likelihood of bystanders playing a negative role in the world of work. Promoting participation in anti-bullying programmes, for instance, has been shown to give positive outcomes in relation to school students (S. Saarento et al., 2015, p. 71).

Based on our findings, it is evident that despite the shared features between bullying and cyberbullying, ICT-elements have the potential of exacerbating the already negative implications of traditional bullying, by magnifying the repetitiveness of aggressive conducts, augmenting moral disengagement and facilitating anonymous behaviours. This is also particularly important because, as discussed below, cyberbullying can occur and affect the victims anytime and anywhere.



Legal definitions

Multiple overlapping concepts

A research conducted by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) on violence, bullying and harassment in the workplace distinguishes between “physical violence”, “harassment, bullying or psychological violence” and “sexual harassment” (Eurofound, 2007, p. 3). Psychological violence would often manifest itself through repeated acts, “which cumulatively can become a very serious form of violence” (V. Di Martino et al., 2003, p. 4). This category of psychological violence, according to some authors, includes bullying, mobbing and sexual harassment (D. Chappell and V. Di Martino, 2006, p. 17). According to other studies, conducts such as bullying, mobbing, *acoso*, *hostigamiento moral*, *harcèlement moral*, *harcèlement psychologique* and psychological harassment all fall under the category of “psychological violence” (K. Lippel, 2016, pp. 9-10).

Although some authors argue that harassment is inherently characterized by the targeting of someone because of a specific characteristic, in particular on the basis of discriminatory grounds (C. Caponecchia and A. Wyatt, 2009, p. 442), harassment is sometimes also used as a stand-alone concept. This is illustrated, for instance, in Brodsky’s definition of harassment: “repeated and persistent attempts by one person to torment, wear down, frustrate, or get a reaction from another. It is treatment that persistently provokes, pressures, frightens, intimidates, or otherwise discomforts another person” (C. M. Brodsky, 1976, p. 2). Compared to bullying, the element of an unequal power relationship is not present in this definition of harassment.

One reason in favour of using the concept of “harassment”, instead of “bullying”, in regulation might be that if lawmakers intend to grant preventive and redress mechanisms for victims of aggressive behaviours, the inclusion of an “imbalance of power” as a legal requirement might be problematic, given the potential difficulties in defining this element in legal terms, let alone identifying it in practice and providing evidence about it. These difficulties would limit access to legal mechanisms for victims of aggressive behaviours. To mitigate this risk and face these difficulties, legislative policies can adopt a broad definition of their scope. For instance, the Multi-sectoral Guidelines to Tackle Third-Party Violence and Harassment Related to Work take an extensive understanding of “third-party violence and harassment” (European Social Dialogue, 2011). The newly adopted ILO Convention No. 190 and Recommendation No. 206 similarly hinge on “violence and harassment”, by defining them as a range of unacceptable behaviours and practices, or threats thereof.

Concerning “cyberbullying”, as we already observed, there is no consensus on a specific definition. Various terms, however, have been used to describe other relevant conducts. “Workplace aggression”, “abuse”, “bullying”, “mobbing” and “harassment” are just some examples (W. Martin and H. La Van, 2010, p. 176).

Concepts chosen in national jurisdictions are influenced by the countries’ social structures and legal traditions (L. Barmes, 2015, p. 12). Not only do these differences impact national concepts but linguistic problems also exist when trying to draw a comparative reconstruction of the legislation concerning this phenomenon (P. Smith et al., 2002, 1131-1132). “Bullying” is a term more likely to be used in

English-speaking countries, while “harassment” (“*harcèlement*”) is more commonly used in French-speaking countries (B. West et al., 2014, p. 599). Some national legal systems may also use multiple overlapping legal concepts to deal with what may be considered bullying in psycho-sociological terms. An act of cyberbullying can, for example, be considered to constitute unlawful threats, assault, stalking, defamation or a cybercrime (C. Langos, 2013). Due to these reasons, some scholars, such as Schat et al: “reconcile this definitional dilemma by pointing to the fact that ‘... the behaviors that constitute workplace aggression are generally consistent with the behaviors that constitute these related constructs” (A.C.H. Schat et al., 2006, p. 49; cited by W. Martin and H. La Van, 2010, p. 176).

Comparative overview of legal definitions on bullying and related conducts

Our findings in national legislation, which are reported in the appendix to this study, confirm the literature to some extent. The differences between bullying and harassment are not that apparent in law. “Harassment” seems to be used as an umbrella term that can also be used to address what could objectively be described as “bullying”, or as any other legal concept used in the relevant language. The French term *harcèlement moral*, which is generally translated in English as “harassment”, shows common elements with what is usually understood as “bullying” in the English language. By way of example, *harcèlement moral* in France is defined as “repeated acts of psychological harassment [against employees,] that have as their object or effect a deterioration in their working conditions likely to affect their rights and dignity, to alter their physical or mental health or to compromise their professional future.”¹⁵ A worker is bullied in Australia if “while the worker is at work [...]: (i) an individual; or (ii) a group of individuals; repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member;” and “that behaviour creates a risk to health and safety.”¹⁶

While, in the psychological and sociological literature, the difference between harassment and bullying seems to depend primarily on the element of “imbalance of power”, this criterion is only occasionally presented in legal definitions. One reference found in our analysis is in the definition of *hostigamiento* in Mexican legislation, which can be freely translated as “the exercise of power in a relationship of real subordination of the victim in relation to the aggressor, in the workplace, which is expressed in either physical or verbal conduct, or both.”¹⁷ This criterion is also present in Japan. A recent amendment to the Labour Measures Promotion Act defines *pawahara* or “power harassment” as “doing harm to the working environment by words and actions beyond the range of what is necessary for the work to be done, based on a relationship of dominance” (General Union, 2019). In the Republic of Korea, moreover, the law prohibits “workplace harassment” by providing that: “no employer or employee shall cause physical or mental suffering to other employees or deteriorate the work environment beyond the appropriate scope of work by taking advantage of superiority in rank, relationship, etc. in the workplace”.¹⁸

The incorporation of the “imbalance of power” criterion into legal provisions on bullying or harassment, nevertheless, seems to be rather rare in our comparative analysis of labour regulation. Chilean law, for instance, presents the notion of *acoso laboral* and describes it as “any conduct that constitutes repeated aggression or bullying”,¹⁹ a notion also found in Colombian legislation, which in turn, defines it as

¹⁵ “Aucun salarié ne doit subir les agissements répétés de harcèlement moral qui ont pour objet ou pour effet une dégradation de ses conditions de travail susceptible de porter atteinte à ses droits et à sa dignité, d’altérer sa santé physique ou mentale ou de compromettre son avenir professionnel.” Art. L1152-1 Code du Travail.

¹⁶ Section 789FD Fair Work Act 2009.

¹⁷ “Hostigamiento: el ejercicio del poder en una relación de subordinación real de la víctima frente al agresor en el ámbito laboral, que se expresa en conductas verbales, físicas o ambas;” Art. 3o. bis. Ley Federal del Trabajo. On the other hand, *acoso sexual*, according to the same Mexican article, does not seem to require such a relationship of subordination.

¹⁸ Art. 76-2 Labour Standards Act. We are thankful, without implicating her, to Jae-Hee Chang for pointing the Japan and Republic of Korea provisions to us.

¹⁹ “Acoso laboral: Asimismo, es contrario a la dignidad de la persona el acoso laboral, entendiéndose por tal toda conducta que constituya agresión u hostigamiento reiterados, ejercida por el empleador o por uno o más trabajadores, en contra de otro u otros trabajadores, por cualquier medio, y que tenga como resultado para el o los afectados su menoscabo, maltrato o humillación, o bien que amenace o perjudique su situación laboral o sus oportunidades en el empleo.” Art. 2. Código del trabajo.

“any persistent and demonstrable conduct [...] aimed at instilling fear, intimidation, terror and anguish [...]” with no reference to the imbalance of power in the relevant provisions.²⁰

Although the element of subordination or power imbalance does not seem particularly reflected in labour law, it is sometimes present in penal provisions. Article 173 of the Penal Code in Spain, for example, provides for criminal sanctions against individuals who in the context of any employment or civil service relationship, by taking advantage of their superior position, repeatedly carry out hostile or humiliating acts against another individual, which result in severe harassment of the victim.²¹

One example that might help explain the difficulty of comparatively analysing legal definitions on harassment and bullying among various languages can be found in Belgium. The French version of the Belgian law on well-being at work uses the term *harcèlement moral*. Most people would translate this as “harassment”, rather than “bullying”. The Dutch version of the text, however, uses the word *pesterijen*, which corresponds at least as close to bullying as to harassment. Dutch speakers may, but would not necessarily have to, translate *pesterijen* as “bullying”, instead of “harassment”.²²

Turning our attention to legislation in English, the legal definition of “bullying” in Australia requires someone to repeatedly behave unreasonably towards the workers. In Saskatchewan (Canada), instead, harassment can be committed through “any inappropriate conduct, comment, display, action or gesture”.²³ Likewise, at the federal level, “harassment and violence” means “any action, conduct or comment including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee [...]”.²⁴ In the United Kingdom, someone harasses another by engaging in certain types of “unwanted conduct[s]” specified in the law.²⁵ The Protection from Harassment Act in Singapore refers to words, behaviour or communication that are “threatening, abusive or insulting”.²⁶ No mention is made of the need for repetitive actions or behaviours.

In certain jurisdictions, the element of repetition or persistence of the conduct is addressed specifically, also by making reference to the consequences of such conduct. The Quebecois legal definition of psychological harassment indicates: “a single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.”²⁷ Alberta (Canada)’s OSH Act states that harassment can mean “any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person [...]”.²⁸ This would indicate the use of “harassment” as an umbrella term that includes bullying conducts such as repetitive behaviours. Also under French criminal law, *harcéler* is defined as the conduct of harassing others by means of repeated comments or behaviour.²⁹

²⁰ “Definición y modalidades de acoso laboral: Para efectos de la presente ley se entenderá por acoso laboral toda conducta persistente y demostrable, ejercida sobre un empleado, trabajador por parte de un empleador, un jefe o superior jerárquico inmediato o mediato, un compañero de trabajo o un subalterno, encaminada a infundir miedo, intimidación, terror y angustia, a causar perjuicio laboral, generar desmotivación en el trabajo, o inducir la renuncia del mismo. En el contexto del inciso primero de este artículo, el acoso laboral puede darse, entre otras, bajo las siguientes modalidades generales: [...]” Art. 2 Ley 1010 de 2006 Por medio de la cual se adoptan medidas para prevenir, corregir y sancionar el acoso laboral y otros hostigamientos en el marco de las relaciones de trabajo.

²¹ “El que infligiera a otra persona un trato degradante, menoscabando gravemente su integridad moral, será castigado con la pena de prisión de seis meses a dos años. Con la misma pena serán castigados los que, en el ámbito de cualquier relación laboral o funcionarial y prevaleciendo de su relación de superioridad, realicen contra otro de forma reiterada actos hostiles o humillantes que, sin llegar a constituir trato degradante, supongan grave acoso contra la víctima.” Art. 173 Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

²² For instance, when typing “to bully” in Google Translate, it results in the Dutch verb *pesten*, which is related to *pesterijen*. When typing “to harass”, the translation given is *lastigvallen*. At the same time, the programme translates *pesten* into “bullying” and *pesterijen* as harassment.

²³ The Saskatchewan Employment Act, SS 2013, c S-15.1, 3-1(1).

²⁴ An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, SC 2018, c 22, amending Subsection 122(1) of the Canada Labour Code.

²⁵ Section 26 Equality Act 2010.

²⁶ Section 3 Protection from Harassment Act 2014.

²⁷ Section 81.18 Act respecting labour standards.

²⁸ Section 1 Occupational Health and Safety Act, SA 2017, c O-2.1.

²⁹ “Le fait de harceler autrui par des propos ou comportements répétés ayant pour objet ou pour effet une dégradation des conditions de travail susceptible de porter atteinte à ses droits et à sa dignité, d’altérer sa santé physique ou mentale ou de compromettre son avenir professionnel, est puni de deux ans d’emprisonnement et de 30 000 € d’amende.” Art. 222-33-2 Code pénal.

The New Zealand Harassment Act 1997 provides for a detailed definition, which also takes explicitly into account the peculiarities of ICT-mediated harassment.³⁰ The Act stipulates: “a person harasses another person if he or she engages in a pattern of behavior that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months.” Repetition of hostile acts is, therefore, a requirement to meet the definition of harassment. Very interestingly for the scope of this study, the definition of harassment under the Act was amended in 2015.³¹ The definition now comprises a pattern of behaviours directed against other persons, including “any specified act to the other person that is one continuing act carried out over any period”. In this context, the Law expressly specified that a “continuing act” could include “a specified act done on any one occasion that continues to have effect over a protracted period (for example, where offensive material about a person is placed in any electronic media and remains there for a protracted period).”³²

In order to cover *cyberharcèlement*, the French Penal Code also specifies that repetition can originate (i) from statements or conduct engaged in by several persons, in a concerted manner or at the instigation of one of them, even though each of those persons has not acted repeatedly; or (ii) from comments or conduct by several persons who in the absence of consultation know that such comments or conduct characterize a repetition (P. Dufourq, 2018; P. Januel, 2018).³³ Legislative amendments have thus been adopted to take under consideration the particular modalities of repetition in an ICT environment, to include also “cyberbullying by proxy”.

Looking at concepts in other languages,³⁴ the law of Bosnia and Herzegovina refers to “behaviour” in case of harassment and repetitive actions in case of bullying. Slovenia defines “harassment” as any undesired behaviour and “workplace mobbing” as any repeated or systematic wrong or clearly negative and offensive treatment or behaviour. A clear distinction between bullying and harassment is thus not always consistently found. Harassment in Norway, for example, can result from “acts, omissions or statements”.

Some jurisdictions use distinct concepts to describe behaviour that resembles what could be described as “bullying”. “Annoyance” is, for example, used in Albania, and it merely requires an undesirable conduct. “Abuse” in Serbia, on the other hand, refers to active or passive behaviour of a repetitive nature; while victimization in Sweden means “actions”, and, therefore, perhaps repetitive action.³⁵

In addition to this, the law of the European Union can also provide examples of how specific terms are translated in the official versions of EU legislative acts in the different languages of the EU Member States. The Employment Equality Framework Directive mandates that “harassment” be deemed “to be a form of discrimination [...] when unwanted conduct related to [religion or belief, disability, age or sexual orientation] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”³⁶ The English term “harassment” is translated into Dutch as “*intimidatie*”, into French as “*harcèlement*”, into German as “*Belästigung*”, into Italian as “*molestie*”, into Polish as “*molestowanie*” and into Spanish as “*acoso*”.

What also emerges from the analysis of the legislation reported in the appendix to this study is the lack of clear differentiation in the definitions of unacceptable conducts based on legal traditions. The elements of these definitions, in fact, differ widely at the national level both between and within common law and civil law traditions, with arguably no element emerging as a constant feature of either tradition.

Some notable elements, instead, seem to span across different legal systems and traditions. The first one is the threat that unacceptable conducts represent for the “dignity” of the victims, an element found in civil law countries such as Austria, Colombia, France, and Italy as well as common law ones such as the United Kingdom. Another aspect is the risk that these conducts pose to the health and safety of

³⁰ Section 3 Harassment Act 1997.

³¹ Harmful Digital Communications Act 2015.

³² New subsection 4 in section 3 of the Harassment Act 1997.

³³ Art. 222-33-2-2 Code pénal.

³⁴ The original versions of these provisions and a courtesy translation into English is provided in the appendix.

³⁵ Based on the unofficial translation of section 4 Organisatorisk och social arbetsmiljö (AFS 2015:4), föreskrifter.

³⁶ Article 2.3 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

people, which is mentioned in common law jurisdictions such as Alberta (Canada), Australia and Saskatchewan (Canada) and civil law ones such as Belgium, Côte d'Ivoire, New Caledonia (France), Serbia and Sweden. Some civil law provisions also expressly mention professional perspectives as something that can be jeopardised by unacceptable conducts (e.g. Chile, Côte d'Ivoire, Democratic Republic of Congo, France, Luxembourg). This, however, does not mean that common law systems neglect this element: a recent judgement issued in New Zealand about unacceptable conducts made through ICT gives substantial consideration to the harm the relevant conducts caused to the professional life of the victim.³⁷

These common elements, however, arguably do not allow to identify universally-unifying common threads in the legal drafting of the statutory provisions that concern unacceptable conducts in the world of work. In light of this, the approach followed in the drafting of the ILO instruments on violence and harassment in the world of work to refer to a range of unacceptable behaviours and practices or threats thereof seems to be reasonable and opportune, also in order to capture and reflect the variety of legal definitions and concepts used worldwide to designate relevant conducts. Bullying and cyberbullying fall manifestly under this broad definition of “violence and harassment”.



Summary conclusion of the definitions

Based on the analysis carried out so far, we understand and refer to cyberbullying in the world of work as the execution of any aggressive behaviour against an individualized (group of) victim(s) through ICT means in the context of work.³⁸ As we discussed, the infliction of these acts results in foreseeable physical or psychological harm to a victim or a group of victims, thereby often degrading the working conditions of the victim(s) or the working environment at large. Cyberbullying requires aggressive behaviour to occur regularly over a reasonable period or the incidence of such aggressive behaviour to have a lasting harmful effect. Cyberbullying is an escalating process that can affect workers, supervisors, managers, directors, clients, subcontractors, employers and other persons involved in a work context.

We do not advance a fixed and detailed legal definition of cyberbullying, in order not to exclude any relevant conduct from our analysis. As we already discussed, cyberbullying is a form of aggressive conduct that is perpetrated through ICT means. Depending on the definitions of aggressive or unacceptable conduct(s) adopted in the relevant legal system, cyberbullying can fall into one or more related legal constructs. Linguistic differences across national jurisdictions also add complexity to this analysis. We, therefore, refer to a broad and encompassing understanding of cyberbullying in the world of work to, subsequently, discuss the legal mechanisms to prevent and address this type of behaviour.

³⁷ New Zealand Police Department of Corrections v. Gavin Powell, CRI-2017-087-000516 [2017] NZDC 22077 accessible at: <http://www.districtcourts.govt.nz/assets/unsecure/2018-05-07/1dc45a6e35/2017-NZDC-22077-New-Zealand-Police-v-Powell.pdf> [Sept. 2019].

³⁸ This understanding is based on the definition of Einarsen and contributors, as found in S. Einarsen et al., 2011, p. 22.

► 2 Incidence and implications of cyberbullying in the contemporary world of work

► Incidence of cyberbullying

Considering the lack of internationally accepted definitions of cyberbullying, it is difficult to ascertain precisely the incidence of cyberbullying in the world of work today. This is also because cultural differences affect what researchers understand as bullying (and cyberbullying). Their methodologies of measuring these behaviours, therefore, differ widely. Research has also been conducted in diverse sectors, which again limits comparability. The data discussed below is specific to cyberbullying. These statistics are based on ad hoc studies, due to a lack of official statistics. For each study, where available, we indicate the definition of cyberbullying used by its authors.

Up until now, a significant part of existing research concerns the impact of cyberbullying on university employees. A study carried out by the University of Sheffield, in the United Kingdom, found that: “around eight out of ten [of the 320 respondents to the survey] had experienced one of the listed cyberbullying behaviours on at least one occasion in the previous six months.” The results also showed that “14 to 20 per cent [of the respondents] experienced them at least once a week” (University of Sheffield, 2012). Similarly, in Canada, 25 per cent of faculty members across four Canadian universities reported being victims of cyberbullying;³⁹ 15 per cent of them said to be targeted by students and 12 per cent by colleagues (W. Cassidy et al., 2016, pp. 85-87). Research has also been carried out concerning teachers in the Czech Republic: circa 22 per cent of respondents reported to have personally experienced a cyber-attack.⁴⁰ However, only 3.5 per cent of the total number of respondents reported having experienced cyberbullying conducts that lasted more than one week in the previous 12 months (K. Kopecký and R. Szotkowski, 2017). This study also mentions research conducted by the American Psychological Association (APA). It involved around 3,000 teachers across the entire United States. Some 80 per cent of these teachers reported having been victims of violence perpetrated by students in the years 2010 and 2011; 4 per cent of them said to have been victims of cyber-attacks (K. Kopecký and R. Szotkowski, 2017, p. 106).

The incidence of cyberbullying is also evident in other sectors. For instance, “according to a 2009 survey carried out by the Swedish Union of Journalists (SJF), 22% of respondents report having been victims of online threats” (Eurofound, 2015, p. 59). Recently, cyberbullying of journalists has caused a row in French media, by the infamous case of the “League of Lol”. The perpetrators were high-profile journalists who committed conducts that can correspond to cyberbullying against female journalists and members of minorities (A. Chrisafis, 2019).

In New Zealand, a survey of 826 workers resulted in around 15 per cent of participants reporting to have been bullied and approximately 2.8 per cent of participants reporting to have been cyberbullied, by experiencing “two or more negative acts at least weekly for at least six months” (D. Gardner, 2016, p.

³⁹ Definition of cyberbullying used in this study: “Through ICT media, cyberbullying uses language or images to defame, threaten, harass, bully, exclude, discriminate, demean, humiliate, stalk, disclose personal information, or contain offensive, vulgar, or derogatory comments with an intent to harm or hurt the recipient.”

⁴⁰ The definition of cyberbullying used in this study is based, among others, on the one from Hinduja and Patchin (2006 and 2009): “A deliberate, repeated and hurtful activity using computer, mobile phone and other electronic devices”, and also takes into account the studies of Li (2007) and Willard (2007).

6).⁴¹ Another study “involving more than 600 public sector participants from across Australia found 72 per cent of public servants reported experiencing or observing task- and person-related cyberbullying over the [previous] six months with 74 per cent ranking their workplace as highly stressful” (Queensland University of Technology, 2016;⁴² see also D. Lawrence, 2015).

Furthermore, a study about Australian manufacturing workers reported: “34% of respondents were bullied face-to-face, and 10.7% were cyberbullied. All victims of cyberbullying also experienced face-to-face bullying”.⁴³ (C. Privitera and M. A. Campbell, 2009, p. 395).

These statistics indicate that cyberbullying in the world of work is a non-negligible phenomenon, which affects workers across sectors and occupations. At the same time, we notice that impact assessments of the current legislation and regulation on bullying and cyberbullying are commonly still lacking or, when carried out, can be incomplete. The Belgian General Directorate on Humanization of Labour, for example, conducted an overview of the case law on violence and (sexual) harassment at work (Direction générale Humanisation du travail, 2010). Even though the evaluation offers an idea of how legal provisions are applied in practice, it does not necessarily assess whether they achieve their objective efficiently and effectively.

► Implications of bullying and cyberbullying

The effects of bullying and cyberbullying on victims and others

There is ample evidence of the negative psychological and physiological consequences of work-related bullying on victims; these effects include prolonged-duress stress disorder, depression, low self-esteem, alcohol abuse and in some occasions suicide (H. Leymann, 1990; M. J. Scott and S. G. Stradling, 2001; K. M. Rospenda, 2002; S. Bond et al., 2010). Eurofound has conducted comparative research on work-related ill-health, between bullied and non-bullied employees (Eurofound, 2013). The results of this research indicate that workers reporting being bullied or harassed also report four times more depression, almost three times more sleeping problems, almost 1.8 times more overall fatigue, and over twice the likelihood of reporting stress compared to workers who did not experience bullying or harassment (Eurofound, 2015, p. 31). Other studies confirm that victims of bullying are affected by mental health issues in the long term (A. O'Rourke and S. K. Antioch, 2016, p. 6). Burnout at workplaces has also been linked to workplace bullying, as shown under a study of 745 assistant nurses in Norway (S. Einarsen et al., 1998).

Moreover, not only the toxic effects of bullying at the workplace harm the physical and mental health of the victim but they can also have “interpersonal and familial consequences” (S. J. Tracy et al., 2006; W. Martin and H. La Van, 2010). Bystanders of bullying might also be harmed and suffer from stress (W. Martin and H. La Van, 2010, p. 179). Indeed, bullying that occurs at workplaces can negatively affect co-workers who witness the act. “Witnesses report lower levels of job satisfaction and higher levels of stress, and a deterioration of both physical and mental health as evidenced by feelings of guilt and fear, insomnia, and headaches” (B. West et al., 2014, p. 601). Besides, they might refrain from supporting the victims of workplace bullying, due to the fear that such support can result in adverse consequences for themselves, such as becoming the next target of similar aggressive acts. Literature also refers to the risk for victims of bullying to replicate this behaviour in the future (W. Martin and H. La Van, 2010, p. 179). Work-related bullying practices, therefore, can have severe and widespread harmful implications.

⁴¹ Definition of bullying and cyberbullying used in this study: “a situation where a person feels they have repeatedly been on the receiving end of negative actions from one or more other people, when it is difficult to defend themselves against these actions. [...] Note that this definition includes both ‘traditional’ face to face bullying (here called workplace bullying (WB)) and negative actions carried out online, known as cyber-bullying (CB).”

⁴² Definition of workplace cyberbullying referred to in this source: “Overt or anonymous person-or task-related bullying, where other workers or external clients use technology to instantaneously and publicly broadcast a comment, video or picture, anywhere and anytime, to embarrass or defame the target.”

⁴³ Definition of bullying used in this study: “Workplace bullying is repeated behavior that offends, humiliates, sabotages, intimidates, or negatively affects someone's work when there is an imbalance of power.”

As noted, while a vast literature describes the harmful effects of work-related bullying, fewer studies examined the impact of work-related cyberbullying. There is no reason to assume, though, that its effects are less severe for the victims, as well as for their surroundings. Indeed, some researchers produced a taxonomy of the effects of cyberbullying on victims (A. Ovejero et al., 2016, p. 9). They grouped these effects into physical, psychological and emotional, school-related (i.e. environment-related), and psychosocial effects. Physical effects include headache, stomach-ache, sleep disorders, tiredness, back-ache, loss of appetite, digestion problems, etc. The psychological and emotional ones include fear, and even feelings of terror, anxiety, anguish, sadness, stress, symptoms of depression. Psychosocial effects, instead, are associated with more severe feelings of isolation and solitude, ostracism and even social rejection. It has also been stressed that cyberbullying can potentially cause harmful psychological effects and that its link with emotional distress is “well established” (J. Juvonen and E.F. Gross, 2008, p. 497). At the same time, as observed above, cyberspace offers perpetrators new and more opportunities to damage the victim, since the “spatial distance between the ‘cyber world’ and the ‘real world’” may embolden perpetrators (C. Langos and M. Giancaspro, 2017, p. 3). Cyberbullies, for instance, can invade the privacy and the sanctuary of the victims’ home, or their personal spaces through the use of ICT. As a result, victims can feel less capable of protecting themselves against the perpetrator, especially if the conduct of cyberbullying takes place in a public cyber-forum, such as Facebook or Twitter, and, thus, in front of a potentially infinite audience in cyberspace (C. Langos and M. Giancaspro, 2017, p. 3). The harmful effects of cyberbullying, in those occasions, could be even more severe than situations of traditional bullying (N. D’Souza et al., 2017). Finally, cyberbullying can disproportionately affect some specific groups of people, such as women and minorities (J. D. Lipton, 2011). For instance, it has been stressed that “as women gain visibility in the blogosphere, they are the targets of sexual harassment and threats” and tend to be “singled out in more starkly sexually threatening terms” (A. Bartow, 2009, p. 392).

The need for universal protection regardless of contractual arrangement or status

So far we have referred in various occasions to aggressive conducts that are work-related. It is necessary to specify, at this point, that due to the characteristics and features of cyberbullying and the possibility to perpetrate it “anytime” and “anywhere” due to the use of ICT-means, we find that the very nature of cyberbullying necessitates a broad understanding of the concepts of ‘worker’ and ‘world of work’. Arguably, the concept of “worker” should go beyond that of employees engaged in an employment relationship. Aggressive conducts can originate from a wide range of situations related to the “world of work” and affect, for instance, self-employed persons or workers of a subcontractor. As argued more extensively in Chapter 5 below, it is, therefore, crucial that measures against aggressive conducts in the world of work protect workers and other persons regardless of their contractual arrangement or employment status.

This approach, for instance, was taken by the anti-bullying provisions included in the Fair Work Act in Australia. These provisions follow the broad definition of a worker that can be found in the Australian Work Health and Safety Act 2011.⁴⁴

Adopting a broad scope of protective measures is essential, also considering that “working in situations that are not, or not properly, covered or protected by labour law and social protection” can particularly “engender or create risks of psychological, psychosocial and physical violence” (P. V. Moore, 2018, p. 3). Some working people, especially casual workers (with regard to the risk of being subject to bullying see P. J. O’Connel et. al, 2007, pp. 39-40; more in general, see V. De Stefano, 2016) and workers whose work is channelled and distributed via ICT, e.g. platform workers (V. De Stefano, 2017), significantly risk finding themselves in these situations. For platform workers, the risk might be even higher because, in most cases, the platforms allow clients to rate the workers’ performance. The work of platform workers may materially depend on these ratings since platforms allocate future tasks and jobs based on ratings and also expel workers whose ratings fall below a certain average. Workers, then, may feel forced to endure abusive behaviours from the clients for fear of losing their jobs if they react, something which could cause the client to rate them poorly.

⁴⁴ Section 789FC Fair Work Act redirects to section 7 of the Work Health and Safety Act 2011. “A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as: (a) an employee; or (b) a contractor or subcontractor; or (c) an employee of a contractor or subcontractor; or (d) an employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or (e) an outworker; or (f) an apprentice or trainee; or (g) a student gaining work experience; or (h) a volunteer; or (i) a person of a prescribed class.”

Without underestimating the risks concerning permanent employees,⁴⁵ some workers can be left unsheltered against bullying and cyberbullying acts compared to their counterparts in permanent employment. This can be particularly true for discriminatory conducts. Self-employed and casual workers, in fact, are sometimes excluded from the entire application of labour regulation, leaving them also outside the scope of anti-discrimination laws (De Stefano, 2016; A. Aloisi and V. De Stefano, 2018). Sometimes, self-employed and temporary workers are treated differently under firms' internal policies. This is well illustrated, for instance, by a case of differential treatment concerning unacceptable behaviours in a major tech company. The company had decided to end mandatory arbitration for individual cases of sexual harassment or assault; nevertheless, temporary workers and contractors have been reported not to benefit from this policy change (D. McCabe, 2019).

Reasons for such vulnerability to bullying and cyberbullying acts can also be found in the lack of job security, which is particularly prominent in the case of casual workers, such as zero-hour contract workers and, as explained above, also platform workers (M. Williams, 2017). Some public authorities indicate a correlation between job insecurity and work environments conducive to bullying (Acas, 2016, p. 13). It also has to be considered that temporary or casual workers may be reluctant to complain about bullying and cyberbullying acts, lest their work relation is discontinued at its expiry, or "zeroed-down", if they do so.⁴⁶

The impact of bullying and cyberbullying acts on these categories of workers can also be exacerbated due to the sometimes limited access to collective rights, such as freedom of association and collective bargaining (H. Johnston and C. Land-Kazlauskas, 2018). The lack of exercise of these fundamental rights is found to be associated with higher risks of violence and harassment (ILO, 2016a, p. 37).

It is, therefore, essential that measures against violence and harassment in the world of work, including cyberbullying, have universal coverage and apply to all workers irrespective of their contractual arrangement or status, to avoid that some of the most vulnerable workers are excluded from protection. As already mentioned, this approach has now been followed by the ILO Violence and Harassment Convention, 2019 (No. 190).

The effects of bullying and cyberbullying on business: What is the price to pay?

Bullying and cyberbullying can threaten the overall functioning of the organization in which they take place, resulting in adverse organizational outcomes. Most research on this topic focuses on traditional bullying. Less has been written about cyberbullying (Queensland University of Technology, 2016). As shown above, however, the effects of cyberbullying on individuals can be at least as detrimental as instances of traditional bullying. Arguably, this should also prompt attention to the damaging effects of cyberbullying on businesses/organizations. Sociological, behavioural and psychological research on the linkages between cyberbullying and its impact on business is, therefore, all the more necessary.

Existing research on bullying indicates a loss of productivity by both parties involved in the bullying acts. According to these studies, there is, in fact, a negative impact on the productivity of perpetrators who spend time and energy on activities that are not relevant to their work (T.G. Weatherbee, 2010, pp. 35-36). At the same time, victims can become less productive because they are forced to spend working time to deal with bullying (B. West et al., 2014, p. 609). As such, it can be argued that it also becomes more difficult for victims and co-workers to remain focused on their work. In a survey conducted by Queensland University of Technology, public sector employees reported a negative impact of cyberbullying on their work performance and productivity (Queensland University of Technology, 2016).

In addition to the research above, it has also been noted that bullying is likely to have negative implications on employee engagement. This could also result in an increased rate of absenteeism (J. L. Power et al., 2013, p. 375). According to existing studies, "employers should be motivated to reduce bullying as employee engagement is associated with higher profits, higher self-rated performance, and greater

⁴⁵ An Australian study, for instance, found that "[c]ontrary to expectation, workplace bullying was more often reported by permanent than casual employees" (D. Keuskamp et al., 2012, p. 116).

⁴⁶ Workers in temporary contracts may be exposed to what has been labelled the "implicit threat" mechanism, namely the fear and reluctance to exercise their contractual and labour rights, afraid that their temporary contract may not be renewed or prolonged, should they do so (A. Aloisi and V. De Stefano, 2018, p. 10).

organizational citizenship” (J.L. Power et al., 2013, p. 375; also see A. Saks, 2006). Organizational citizenship means the commitment of workers to get involved in the organization’s success beyond their tasks. Job satisfaction of victims of bullying can, of course, also be materially affected (T. Carroll and M. Lauzier, 2014; T. Muhonen et al., 2017), something that can have additional detrimental implications.

With regard to team performance, it has been observed that occupational bullying can lead to the breakdown of work relationships and teams (L. Keashly and J. H. Neuman, 2004, pp. 350-352). These consequences could be exacerbated even more by workplace cyberbullying. Significantly, destructive leadership and less effective organizational strategies have been associated with more bullying at work (D. Gardner, 2016). Bullying might then disrupt work processes and flow, which makes it difficult to meet customer expectations, with negative implications on business success (H. Hoel et al., 2003; T. Creasy and A. Carnes, 2017).

The consequences of bullying and cyberbullying conducts impact the productivity and profitability of businesses adversely, in addition to other financial and organizational costs associated with them. As already explained, the victims may also suffer significant health damages that – besides being harmful and negative *per se* – force them to be absent from work. The cost of employee absence due to bullying and harassment in Canada has been estimated at around \$19 billion per year (D. Marshall, 2016). Aggressive behaviours can additionally trigger liabilities for employers, and the related financial costs can be significant.⁴⁷ Such costs can include internal investigation costs, mediation costs, but also litigation and redress costs. For instance, in Canada, Walmart was ordered to pay significant damages to a worker who was a victim of bullying.⁴⁸ Some authors have used this case as a reference to warn other organizations to treat bullying issues diligently (N. Gupta, 2014).

Bullying can also lead to higher staff turnover (N. Djurkovic et al., 2004; H. Hoel et al., 2011, pp. 133-135), which can be time-consuming and expensive for employers. Continuously recruiting and training new employees is associated with additional replacement and training costs. In an Irish study, 60 per cent of respondents had considered leaving their jobs due to bullying – 15 per cent actually left (P. O’Connell et al., 2007, p. 11-12). Finally, bullying and cyberbullying may also generate reputational damage for businesses (N. D’Souza et al., 2017, p. 15). A negative reputation in this area may also signalize to prospective employees that they may not be sufficiently valued and respected in a particular working environment, something that could discourage the best candidates from applying for or accepting positions in an organization. Additionally, instances where third parties are victims of bullying or cyberbullying conducts also bring reputational damage to businesses.

It is evident, therefore, that bullying has detrimental consequences well beyond the already very severe implications on victims. Cyberbullying, according to a recent study, “has a potentially broader scope of harm for the targets and organisations involved” (N. D’Souza et al., 2017, p. 3). Accordingly, measures against these types of behaviours can be in the interest of employers, workers and societies at large.

The case to consider third parties as victims of violence in the world of work

The discussion above has shown the potential for severe and widespread implications of bullying and cyberbullying in the world of work, which add to the already grave consequences on the victims. In this respect, it is also worth examining the issue of third parties. Subjects such as customers, clients, users, suppliers, etc. can, of course, be perpetrators of violence and harassment in the world of work. Some existing policies already cover this issue (see, for instance, examples in European Social Partners, 2011). There is, however, a shortage of material in labour policies, regulation and studies that address violence and harassment, including through ICT tools, suffered by third parties.

Of course, these behaviours may fall in the scope of civil, commercial and criminal regulation, as the case may be. Nonetheless, the features of violence and harassment in the world of work and their potential pervasiveness that, as argued in this study, go beyond the physical and temporal barriers of workplaces and working shifts call for a holistic approach in policy that warrants considering unacceptable conducts against third parties in the world of work also as a work-related issue.

⁴⁷ See, for instance, the decision of the Supreme Court of the United Kingdom, *Mohamud v Wm Morrison Supermarkets, Plc*, [2016] UKSC 11.

⁴⁸ *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419.

Firstly, this is because if workers perpetrate violence or harassment against a third party, also via ICT tools, they may trigger the vicarious liability of the employer vis-à-vis the third party, under existing laws and practices. These behaviours may also result in disciplinary action of employers against the workers who are the perpetrators. The need to assess the facts to determine responsibilities and take appropriate action – which may be even more complicated when ICT tools are involved (imagine cyber-bullying conducts perpetrated through a social media account managed by several persons) – would most likely fall in the realm of labour regulation.

Besides, a third party can suffer violence and harassment while being at work, as in the case of the worker of a client company being bullied by the worker of a business providing service to this company (or vice versa).

Commercial, criminal, civil and labour legal issues would, in these case, be intertwined, something that calls upon regulators and policymakers to pay heed to the world-of-work implications of unacceptable conducts also when dealing with criminal, commercial and civil regulation.

Finally, as mentioned above, conducts such as bullying and cyberbullying can harm and generate stress also to bystanders (W. Martin and H. La Van, 2010, p. 179). Unacceptable conducts against third parties, therefore, can also hurt workers, managers, and employers who witness them or have to take care of the victims, something which again shows how these conducts bear relevance in the world of work. Importantly, unacceptable behaviours perpetrated through ICT tools can have repercussions also through multiple accesses to ICT-mediated contents. For instance, when co-workers, managers and employers have to access to a specific piece of communication to ascertain and evaluate responsibilities, the risk of hurting other people beyond the immediate target of the action can be magnified.

It is, therefore, critical that policies and regulations on violence and harassment in the world of work also take into account third parties as both potential perpetrators and victims of unacceptable actions, including those committed through ICT tools.

In this respect, it is worth noting that the ILO Violence and Harassment Convention, 2019 (No. 190) explicitly mandates that, where applicable, measures and policies to prevent and eliminate violence and harassment in the world of work “should take into account violence and harassment involving third parties”. This wording arguably covers both the situation in which third parties are the perpetrators and the situation in which they are the victims of unacceptable conducts.⁴⁹ This is an important step forward, which can inspire policy and lawmakers to adopt a holistic approach that considers violence and harassment against third parties also as work-related issues.

⁴⁹ Violence and Harassment Convention, 2019 (No. 190), Article 4. See also the Violence and Harassment Recommendation, 2019 (No. 206), Paragraph 8.

► 3 Regulatory instruments concerning bullying and cyberbullying around the world

► Sources of anti-bullying regulation adopted in different legal systems

Bullying at the workplace has been dealt with through many instruments, varying at the country level. It can be stressed that there is a dichotomy of such instruments, concretely between regulatory and unilateral ones. Regulatory instruments can be statutory provisions or collective agreement provisions directly addressing bullying. On the other hand, the unilateral anti-bullying measures often take the form of enterprise policies, such as code of practices.

Legal systems can provide for a range of options for victims to protect themselves against bullying in the world of work. Some jurisdictions introduced explicit provisions on anti-bullying protection, while others offer provisions that can nevertheless offer legal remedies to victims. It is, in fact, important to notice that while some regulatory instruments may not mention “bullying” explicitly, some bullying behaviours may nonetheless fall under the definition of other aggressive conducts, such as “harassment”.⁵⁰

Provisions that explicitly reference bullying or harassment can be included into general labour or civil law statutes or labour codes. Jurisdictions that have taken this approach are, among others, Australia,⁵¹ Canada (Federal),⁵² Chile,⁵³ Côte d’Ivoire,⁵⁴ Croatia,⁵⁵ France,⁵⁶ French Polynesia (France),⁵⁷ Guinea,⁵⁸

⁵⁰ An example is Italy, where article 2087 of the Civil Code directs employers to take all measures necessary to safeguard their employees’ physical and moral integrity. Bullying or harassment is not mentioned explicitly, but this article includes measures to prevent moral harassment. See: <http://hudoc.esc.coe.int/eng?i=2014/def/ITA/26/2/EN> [Sept. 2019].

⁵¹ Anti-Bullying Measures in Schedule 3, Fair Work Amendment Act 2013. It amends Chapter 6, part 6-4B of the Fair Work Act 2009. Australian Work Health and Safety Acts can, however, also deal with bullying through the employer’s duty of care. See, *Safe Work Australia, Guide for preventing and responding to workplace bullying*, 2016.

⁵² An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, SC 2018, c 22, amending Subsection 122(1) of the Canada Labour Code.

⁵³ Law no. 20607 of 8 August 2012 modifies the Labour Code, sanctioning practices of labour harassment (*acoso laboral*) in addition to those of sexual harassment (*acoso sexual*).

⁵⁴ Art. 5 Code du Travail, edition 2017.

⁵⁵ Art. 134 Labour Act 2014.

⁵⁶ Livre Ier, Titre V, Chapitre II on *harcèlement moral*, Labour Code.

⁵⁷ Art. 1141-1 – 1141-4 Code du Travail.

⁵⁸ Art. 8 Code du Travail, edition 2014.

Mexico,⁵⁹ New Caledonia (France),⁶⁰ Portugal,⁶¹ Quebec (Canada),⁶² Saskatchewan (Canada),⁶³ Slovenia,⁶⁴ Spain⁶⁵ and Turkey.⁶⁶

Some legal systems like Alberta (Canada),⁶⁷ Belgium,⁶⁸ Norway⁶⁹ and Venezuela,⁷⁰ instead, integrate their provisions in occupational safety and health (OSH) law. Sweden incorporated measures on victimization in the provisions on Organisational and social work environment (AFS 2015: Eng).⁷¹ Relevant provisions may be included in equal opportunities Acts or anti-discrimination Acts as done by Albania,⁷² Austria,⁷³ Bosnia and Herzegovina,⁷⁴ Bulgaria,⁷⁵ Italy,⁷⁶ Norway,⁷⁷ Slovakia,⁷⁸ Spain⁷⁹ and the United Kingdom.⁸⁰ In addition, legislation such as the British Columbia's (Canada) Workers Compensation Act can also be aimed at fighting bullying or harassment;⁸¹ human rights instruments can also be used, as it is the case in New Zealand.⁸²

Some legal systems have adopted specific instruments dealing with bullying or harassment at work. This is the case of the Law on Prevention of Harassment at Work in Serbia⁸³ and Colombia⁸⁴ or of a specific ministerial act in the Democratic Republic of Congo⁸⁵ and a Law on Protection from Harassment at the Workplace in North Macedonia.⁸⁶

In Luxembourg, anti-bullying measures are instead included in a collective agreement that was later given general application.⁸⁷ Luxembourg is not the only country. The social partners in France, for in-

⁵⁹ Art. 30 bis, 133 XII and XIII and 994 VI, Ley Federal del Trabajo, regulating against both *hostigamiento* and *acoso sexual*.

⁶⁰ Livre I, Titre I, Chapitre IV, Art. 114-1 - 114-8 Code du Travail.

⁶¹ In particular Law no. 73/2017 which strengthens the legislative framework for the prevention of harassment by amending the Labour Code; General Labour Law in Public Functions and the Labour Procedure Code; article 29 of the Labour Code generally prohibits harassment in the private sector.

⁶² "Psychological harassment" in Chapter IV, Division V.2 and Chapter V, Division II.1 Act respecting labour standards.

⁶³ The Saskatchewan Employment Act, SS 2013, c S-15.1, 3-1(1).

⁶⁴ Article 6 (a) of the Employment Relationship Act.

⁶⁵ Article 4, §1, sub-clause e, the Law of the Statute of Workers ("harassment on grounds of racial or ethnic origin, [...]").

⁶⁶ Art. 417 Code of Obligations (Türk Borçlar Kanunu No. 6098). According to T. Centel, the provision addresses "psychological harassment", which includes mobbing. See: T. Centel, 2017, p. 125.

⁶⁷ Occupational Health and Safety Act, SA 2017, c O-2.1 (See description of harassment).

⁶⁸ Art. 32/2-32sexiesdecies Law on the wellbeing of workers in the performance of their work (Loi relative au bien-être des travailleurs lors de l'exécution de leur travail).

⁶⁹ The Norwegian Working Environment Act of 17 June 2005 refers to harassment in section 2-3, 4-3 and 13-1 without defining it.

⁷⁰ Section 56 Ley orgánica de prevención, condiciones y medio ambiente de trabajo.

⁷¹ Organisatorisk och social arbetsmiljö (AFS 2015:4), föreskrifter.

⁷² Art. 12 §2 Law no. 10.221 of 4 February 2010 on protection from discrimination. The article deals with "annoyance". The definition pursuant to article 3 resembles "bullying" and "harassment".

⁷³ "Belästigung" in sections §8a, §16 and §19 Bundesgesetz über die Gleichbehandlung im Bereich des Bundes.

⁷⁴ Art. 4 of the Law on Prohibition of Discrimination, Official Gazette No. 59/09, published 28 July 2009.

⁷⁵ Art. 5 and 17 of the Law on Protection against Discrimination deal with harassment.

⁷⁶ "Molestie" in art. 2 Decreto Legislativo 9 luglio 2003, n. 216.

⁷⁷ Section 13 Equality and Anti-Discrimination Act also covers harassment.

⁷⁸ Section 2 juncto sections 6 and 7 Act 365/2004 of 20 May 2004 on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act).

⁷⁹ Art. 7 Organic Law 3/2007, of 22 March, for the effective equality of women and men. This article only deals with sexual harassment and harassment on the grounds of sex.

⁸⁰ Art. 26, the Equality Act 2010.

⁸¹ Section 5.1 (1) (a) (ii) Workers Compensation Act [RSBC 1996] Chapter 492.

⁸² Section 62 (on sexual harassment) and 63 (on racial harassment) Human Rights Act 1993. See also Section 3 Harassment Act 1997.

⁸³ Act of 26 May 2010 on the Prevention of Harassment at Work, also see:

<http://hudoc.esc.coe.int/eng?i=2014/def/SRB/26/2/EN> [Sept. 2019]. A Code of Conduct for employers and employees with regard to bullying in the workplace has been adopted by the Minister of Labour.

⁸⁴ Ley 1010 de 2006 Por medio de la cual se adoptan medidas para prevenir, corregir y sancionar el acoso laboral y otros hostigamientos en el marco de las relaciones de trabajo.

⁸⁵ Arrêté ministériel n° 12/CAB.MIN/TPS/114/2005 du 26 octobre 2005 portant interdiction du harcèlement sexuel ou moral dans l'exécution d'un contrat du travail.

⁸⁶ Law on Protection from Harassment at the Workplace (Official Gazette No. 79/2013) and its amendments (Official Gazette No. 147/2015). The authors have not found a translated copy. See, however, the Country report of the European network of legal experts in gender equality and non-discrimination, http://ec.europa.eu/newsroom/document.cfm?doc_id=41874 [Sept. 2019].

⁸⁷ Règlement grand-ducal du 15 décembre 2009 portant déclaration d'obligation générale de la convention relative au harcèlement et à la violence au travail conclue entre les syndicats OGB-L et LCGB, d'une part, et l'UEL, d'autre part.

stance, also concluded a comprehensive national collective agreement on 26 March 2010.⁸⁸ The National Labour Foundation in the Netherlands, which gathers the three peak trade union federations and three peak employers' associations, instead, developed a recommendation on the matter.⁸⁹

Importantly, some legal systems offer remedies in general anti-harassment instruments, which can also encompass work-related conducts. This is the case, for instance, in New Zealand,⁹⁰ Singapore⁹¹ and the United Kingdom.⁹²

Some regional instruments are also of importance. The EU has incorporated provisions against harassment into its anti-discrimination legislation.⁹³ Article 26 of the Revised European Social Charter of the Council of Europe, instead, mandates adequate prevention and protection against sexual harassment.⁹⁴ It also obliges the ratifying States "to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct."⁹⁵ The European Committee of Social Rights (ECSR), a body supervising the application of the Charter, has clarified that the protection of employees against moral harassment at work shall include "the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights."⁹⁶ The latter can be interpreted more broadly as a right not to be retaliated against for availing oneself of these rights.⁹⁷

Finally, soft law and administrative sources can also be used to counter bullying. The Irish Health and Safety Authority issued a Code of Practice for Employers and Employees on the Prevention and resolution of Bullying at Work (Health and Safety Authority, 2007). Safe Work Australia published a guide for preventing and responding to workplace bullying (Safe Work Australia, 2016). The Spanish Ministry of Labour and Immigration has provided labour inspectors with guidelines on bullying and violence at work.⁹⁸



Anti-cyberbullying regulation adopted in different legal systems

Some regulatory instruments already specifically focus on acts that can correspond to cyberbullying. Examples found so far include New Zealand's Harmful Digital Communications Act,⁹⁹ Nova Scotia (Can-

⁸⁸ Accord du 26 mars 2010 sur le harcèlement et la violence au travail, <https://travail-emploi.gouv.fr/IMG/pdf/accord-harcelement-violence-2010-2.pdf> [Sept. 2019].

⁸⁹ Stichting van de Arbeid, *Aanbeveling intimidatie en geweld op het werk*, 5 November 2008, nr. 4/08.

⁹⁰ Harassment Act 1997.

⁹¹ The Protection from Harassment Act, 2014 in Singapore.

⁹² Protection from Harassment Act 1997.

⁹³ Art. 2.3 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation refers to "harassment" as a form of discrimination when unwanted conducts are based on prohibited grounds.

⁹⁴ Art. 26 §1 European Social Charter (Revised).

⁹⁵ Art. 26 §2 European Social Charter (Revised). See also, the 7th edition of collected texts on the European Social Charter (Council of Europe, 2015). This publication (p.164) gives two useful examples: "An example illustrating this would be that of a worker who for reasons of hostility on the part of the employer and/or his colleagues, is systematically excluded from discussions relating to the organisation of work to which his colleagues are invited to take part. Another example could be not giving a worker an office or duties corresponding to his grade and functions for similar reasons."

⁹⁶ Art. 26§2 *Digest of the case law of the European Committee of Social Rights*, 1 September 2008, available at: <https://rm.coe.int/168049159f> [Sept. 2019].

⁹⁷ Conclusions of the Committee, 2014 – Lithuania – Article 26-2, <http://hudoc.esc.coe.int/eng?i=2014/def/LTU/26/2/EN> [Sept. 2019].

⁹⁸ Ministerio de Trabajo e Inmigración, *Criterio técnico 69/2009 sobre las actuaciones de la inspección de trabajo y seguridad social en materia de acoso y violencia en el trabajo*, http://www.mitramiss.gob.es/itss/ITSS/ITSS_Descargas/Atencion_ciudadano/Criterios_tecnicos/CT_69_2009.pdf.

⁹⁹ Harmful Digital Communications Act 2015, available at: <http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM6124401> [Sept. 2019].

ada's Intimate Images and Cyber-protection Act,¹⁰⁰ Pakistan's Prevention of Electronic Crimes Act,¹⁰¹ and North Carolina (USA)'s School Violence Prevention Act.¹⁰² All these acts, but the acts on cyberbullying against school employees, have a general application and they are thus not meant to govern situations of cyberbullying at work solely. Still, they may apply in the world of work by their general scope.

According to North Carolina's General Statutes, students and school employees in the context of elementary and secondary education are protected against (cyber)bullying and harassing behaviour of other school employees or students.¹⁰³ A student who is convicted for cyberbullying a school employee shall also be transferred to another school within the local school administrative unit, or – if there is not an appropriate alternative school – be transferred to a different class, or assigned to another teacher.¹⁰⁴

Furthermore, the State's General Police Regulations provided a general penalty for persons guilty of cyberbullying.¹⁰⁵ The provision was, however, ruled unconstitutional because a court found that "the statute [violated] the First Amendment's guarantee of the freedom of speech."¹⁰⁶ Section 4 of the School Violence Prevention Act 2012 has, besides the general penalty, added a specific penalty for students who cyberbully school employees.¹⁰⁷

Utah (USA) similarly addresses "bullying" involving a school employee or student intentionally committing a written, verbal, or physical activity with certain well-defined effects against another school employee or student.¹⁰⁸ A detailed definition of "cyberbullying" is also given.¹⁰⁹

Not every state, however, explicitly protects teachers. New Jersey (USA), for instance, introduced the Anti-Bullying Bill of Rights Act in 2011, as the successor to a public school anti-bullying statute that had already been amended in 2007 to include cyberbullying.¹¹⁰ The Act indicates that "harassment, intimidation or bullying" can mean any gesture, any written, verbal or physical act, or any electronic communication.¹¹¹ The personal scope – in contrast, for example, to North Carolina's – is limited to cyberbullying suffered by students. The Bills that were recently proposed to strengthen schools' anti-bullying policies would not alter this limited personal scope.¹¹² The New Jersey (USA) Code of Criminal Justice also criminalizes cyber-harassment.¹¹³

¹⁰⁰ Intimate Images and Cyber-protection Act 2017, available at: https://nslegislature.ca/legc/bills/63rd_1st/1st_read/b027.htm [Sept. 2019].

¹⁰¹ The Prevention of Electronic Crimes Act, 2016, available at: http://www.na.gov.pk/uploads/documents/1470910659_707.pdf [Sept. 2019].

¹⁰² The School Violence Prevention Act 2012, available at: <https://www.ncleg.gov/enactedlegislation/sessionlaws/pdf/2011-2012/sl2012-149.pdf> [Sept. 2019].

¹⁰³ N.C. Gen. Stat. Ann. § 115C-407.15.

¹⁰⁴ N.C. Gen. Stat. Ann. § 115C-366.4.

¹⁰⁵ N.C. Gen. Stat. Ann. § 14-458.1.

¹⁰⁶ State of North Carolina v. Robert Bishop, 368 N.C. 869.

¹⁰⁷ N.C. Gen. Stat. Ann. § 14-458.2. According to some commentators, however, this more specific provision might also violate the First Amendment or the "void-for-vagueness principles encompassed in the Due Process Clause" (J. L. Seay, 2015, p. 392).

¹⁰⁸ Utah Code Ann. § 53G-9-601 (West).

¹⁰⁹ "(4) "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication."

Public Education Definitions Coordination, 2019 Utah Laws H.B. 28 (West's No. 293).

¹¹⁰ N.J. Stat. Ann. § 18A:37-13.1 (West).

¹¹¹ N.J. Stat. Ann. § 18A:37-14 (West).

¹¹² 2018 New Jersey Assembly Bill No. 5270 and 2018 New Jersey Senate Bill No. 3433.

¹¹³ 2014 New Jersey Revised Statutes, Title 2C-The New Jersey Code of Criminal Justice, Section 2C:33-4.1-Crime of cyber-harassment is reported in the Appendix below and it is accessible at: <https://law.justia.com/codes/new-jersey/2014/title-2c/section-2c-33-4.1/> [Sept. 2019].

This Act also specifically mentions the intention to "emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to [their] person" (see Point 1.a. (2) of Section 2C:33-4.1).

New Zealand recently introduced an Act that specifically covers situations of cyberbullying.¹¹⁴ It has an encompassing scope since it includes all forms of electronic communication (beyond social media). The Act provides for both criminal and non-criminal remedies. Criminal remedies can take place directly after the cyberbullying conduct, while non-criminal remedies are mainly used to remove publicly available harmful content. The Act also allows courts to request an online content host to identify the author of anonymous or pseudonymous communication.¹¹⁵ In a recent judicial case, the Act was applied to sanction a person who had posted offensive material about a former partner, also compromising her employment.¹¹⁶

In 2016, Pakistan enacted legislation providing for imprisonment up to three years or a fine for acts of “cyber stalking”. Conducts of cyberbullying at work can also arguably fall in the scope of this offence.¹¹⁷ Some observers, however, argued that the Act “is drafted in overly broad and vague language” (Digital Rights Foundation, 2017) and that this vagueness might also cause the Act to be unconstitutional (F. Daudpota, 2016).

Issues concerning adequate drafting of Acts dealing with unacceptable conducts perpetrated through ICT tools are not rare. Besides the examples mentioned above, the Supreme Court of Nova Scotia (Canada) had declared the Cyber-safety Act 2013 unconstitutional because of the definition given to “cyberbullying”. According to the Court, this definition made the Act “over-inclusive” and in violation of the rights to freedom of expression and to liberty enshrined in the Canadian Charter of Rights and Freedoms 1982.¹¹⁸

The more recent Nova Scotia (Canada)’s Intimate Images and Cyber-Protection Act 2017 creates “civil remedies to deter, prevent and respond to the harms caused by non-consensual sharing of intimate images and cyber-bullying”.¹¹⁹ The Act, at the same time, aims to preserve freedom of thought and speech, as well as to provide assistance through an agency if citizens want to respond against “non-consensual sharing of intimate images and cyber-bullying”.¹²⁰ If cyberbullying is identified, courts can, for example, declare that a certain communication amounts to cyberbullying, prohibit the perpetrators from doing this type of communications, order general, special, aggravated or punitive damages and prohibit the perpetrators from future contact with the applicant or another person. Courts can also order to reveal to the victim information that may help identify the perpetrator and to take down or disable access to

¹¹⁴ Harmful Digital Communications Act 2015, available at:

<http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM6124401> [Sept. 2019]. Data tables provided for by the government indicate that 18 charges for Harmful Digital Communications Act offences have been lodged in 2015-16, 85 in 2016-17 and 107 in 2017-18 (Stats NZ, 2018). See: <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#harmful-digital> [Sept. 2019].

¹¹⁵ Section 19 Harmful Digital Communications Act 2015, available at:

<http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM6124401> [Sept. 2019].

¹¹⁶ New Zealand Police Department of Corrections v. Gavin Powell, CRI-2017-087-000516 [2017] NZDC 22077 accessible at: <http://www.districtcourts.govt.nz/assets/unsecure/2018-05-07/1dc45a6e35/2017-NZDC-22077-New-Zealand-Police-v-Powell.pdf> [Sept. 2019].

¹¹⁷ Cyber stalking is defined as: “to coerce or intimidate or harass any person, use information system, information system network, the Internet, website, electronic mail or any other similar means of communication to - (a) follow a person or contacts or attempts to contact such a person to foster personal interaction repeatedly despite a clear indication of disinterest by such person; (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication; (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.” Section 21 Prevention of Electronic Crimes Act, 2016.

¹¹⁸ Crouch v. Snell, 2015 NSSC 340, 2015 CarswellNS 995. Under the Cyber-safety Act, “(b) “cyberbullying” means any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person’s health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way”.

¹¹⁹ Cyberbullying is defined as “an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual’s health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual’s health or well-being or was reckless with regard to the risk of harm to another individual’s health or well-being, and may include (i) [...] or (x) communications that incite or encourage another person to do any of the foregoing.” Section 3 Intimate Images and Cyber-Protection Act, 2017.

¹²⁰ “[...] (b) uphold and protect the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication; and (c) provide assistance to Nova Scotians in responding to non-consensual sharing of intimate images and cyber-bullying.” Section 2 *ibid*.

the communication. Furthermore, they can refer the matter to dispute-resolution services, and issue any other order that is “just and reasonable”.¹²¹

¹²¹ Section 6 *ibid.*

► 4 Analysis of anti-bullying measures and of their potential to cover cyberbullying practices

► Types of anti-bullying measures

The existence of anti-bullying provisions is undoubtedly crucial for victims to have “the right to challenge the offensive behaviour”, borrowing the words of the ECSR reported at Subchapter 3.1 above. At the same time, it is of equal importance for individuals to work in environments that are designed to minimize the risk of suffering offensive behaviours in the first place.¹²² This is why preventive measures are of equal importance, not only for individuals but also for the overall functioning of the organization. Indeed, as indicated above, prevention can also protect firms from the negative implications of bullying and cyberbullying.

In light of this, initiatives that aim at raising awareness on unacceptable conducts in the world of work, including bullying and cyberbullying, are an essential first step.¹²³ More institutionalized or systematic preventive measures are, however, recommendable. Within the framework of the Spanish Organic Law 3/2007 on the effective equality of women and men, for instance, companies must promote working conditions that prevent sexual harassment and, to this end, they must establish specific procedures for its prevention.¹²⁴ Risk prevention about bullying, regardless of the reason, is also an obligation under Belgian law.¹²⁵ The Swedish provisions on organizational and social work environment mandate procedures to counter conditions in the work environment that could give rise to victimization.¹²⁶

Prevention is indeed essential for both individuals and businesses, and the provisions just mentioned indicate that national legislators are aware of its importance. Research and practice, however, show that, despite preventive mechanisms, bullying and harassment continue to affect workers, employers, managers and other individuals. As such, measures to redress harm are also vital for victims. Moreover, it can also be argued that measures of redress also have an implicit preventive function, since the prospect of sanctions or compensation of damage can deter some perpetrators from engaging in unacceptable conducts.

An example of this interplay between prevention and redress can be observed in the employer’s duty of care that can be found in many legal systems. This duty typically implies a right to compensation for injured parties and, therefore, at the same time, incentivizes employers to take preventive measures to limit such risks. Examples of workers invoking the employer’s duty of care to obtain redress for unacceptable conducts at work can be found in comparative legal analysis. A digest of Belgian case law on violence, bullying and sexual harassment at work, for instance, mentions that in at least three cases,

¹²² According to the ECSR, “Article 26§2 requires States Parties to take adequate preventive measures against moral harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies.” <http://hudoc.esc.coe.int/eng?i=2010/def/MLT/26/2/EN> [Sept. 2019].

¹²³ In Norway, the Prime Minister launched a nationwide campaign against workplace bullying “Working without bullying” 2005-2007. It included a TV campaign and a wide-ranging training programme for union representatives and managers, <http://www.jobbingutenmobbing.no/> [Sept. 2019]. A National Plan for Equality, Gender, Citizenship and Non-Discrimination in Portugal also raised awareness for sexual harassment and other forms of harassment. See <http://hudoc.esc.coe.int/eng?i=2014/def/PRT/26/2/EN> [Sept. 2019].

¹²⁴ Art. 48.

¹²⁵ Art. 32/2 Law on the wellbeing of workers in the performance of their work.

¹²⁶ Section 13 Swedish Work Environment Authority provisions on organizational and social work environment, with general recommendation on application thereof (AFS 2015:4) <https://www.av.se/globalassets/filer/publikationer/foreskrifter/engelska/organisational-and-social-work-environment-afs2015-4.pdf>.

judges agreed that bullying had taken place, but did not order the employer to pay damages, since the employer had made all possible efforts to find a solution to the situation even if it did not lead to a positive result.¹²⁷ This outcome is due to the provisions of the Code pénal social. Article 122 provides a penal sanction for employers who (i) do not take the appropriate measures once the issue has been brought to their attention and (ii) do not take the necessary protective measures.¹²⁸

An Australian case also shows that, in common law jurisdictions, an employer's duty to provide and maintain a working environment that is safe and without risk to health can be derived from company policies and be incorporated into the contract of employment, thereby becoming a contractual obligation (S. Penning, 2008). In *Goldman Sachs JBWere Services Pty Ltd v Nikolich*, the Federal Court of Australia ruled that based on an internal policy document, the employer had the responsibility to provide a safe work environment. The Court referred to several factors to substantiate its view.¹²⁹ Still, it has been noted that employers reacted to this ruling by explicitly stating in company policies that they merely provide for non-binding directives, to minimize the risk these documents trigger legal obligations that can be incorporated into employment contracts (C. Langos and M. Giancaspro, 2017, pp. 9-10).

Measures to make duties of care mandatory in national legal systems may arguably be necessary to ensure that these duties are not unilaterally set aside, something which could materially weaken the protection of workers, employers, and societies at large against unacceptable conducts at work.

In addition to the duty of care, other redressive measures can be based on specific torts, criminal or employment law provisions, including the possibility of setting up internal dispute resolution mechanisms. In France, for instance, the Labour Code contains provisions on mediation procedures in case of harassment,¹³⁰ while criminal sanctions, including imprisonment and a fine, are included in the Penal Code.¹³¹ Bullying behaviours may amount to a criminal offence under the Spanish Penal Code.¹³² The Singaporean Protection from Harassment Act, 2014, instead, is an example of how harassment as a general offence can be used in the world of work.¹³³

Remedies do not solely originate from criminal law. In the Netherlands, for instance, workers can file a complaint against their employers to the Social Affairs and Employment Inspectorate, which generally supervises working conditions and working hours, but also addresses complaints about bullying.¹³⁴

Article 14 of the Labour Inspection Convention, 1947 (No. 81) notes that labour inspectorates must be notified of industrial accidents and occupational disease as prescribed by national laws and regulations. Inspectorates have increasingly focused on stress, harassment, and bullying in the workplace as an essential part of occupational safety and health (ILO CEACR, 2006, p. 4). For instance, in the Geneva Canton (Switzerland), workers who are harassed and do not receive help from their employer can

¹²⁷ X, *Violence et harcèlement moral ou sexuel au travail – jurisprudence*. Available at: <http://www.emploi.belgique.be/publicationDefault.aspx?id=42780> [Sept. 2019]. p. 14.

¹²⁸ Art. 122 Code pénal social: “Les mesures de prévention relatives à la prévention des risques psychosociaux au travail[:]
Est puni d'une sanction de niveau 3, l'employeur, son préposé ou son mandataire qui, en contravention à la loi du 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail et à ses arrêtés d'exécution : [...] 5° ne prend pas les mesures conservatoires nécessaires lorsque la gravité des faits de violence ou de harcèlement moral ou sexuel au travail l'exige;

6° ne met pas en place des procédures directement accessibles au travailleur qui estime subir un dommage découlant de risques psychosociaux au travail et qui sont conformes aux dispositions fixées par le Roi; [...]”.

¹²⁹ “Those factors included: (1) the nature of the term, and the obligation(s) it imposes, and whether the term is of a kind normally found in employment contracts; (2) the language of the term and whether it speaks in terms of firm duties or obligations rather than generalised or aspirational objectives; (3) the time at which the policy document was made available to the employee; and (4) whether the employee was required to read the policy and indicate understanding and acceptance of the same through signature” (C. Langos et al., 2017, pp. 8-9).

¹³⁰ Art. L.1152-6 CT. For a report on the use and adequacy of mediation in cases of bullying and harassment, see R. Saundry et al., 2013.

¹³¹ Acts that may correspond to bullying are considered a criminal offence in article 222-33-2 of the Criminal Code.

¹³² Art. 173/1 Spanish Penal Code.

¹³³ The Act gives illustrations. One of those refers to the situation in which “X and Y are co-workers. At the workplace, X loudly and graphically describes to the other co-workers X's desire for a sexual relationship with Y in an insulting manner. X knows that Y is within earshot and intends to cause Y distress. Y is distressed. X is guilty of an offence under this section.” Section 3 covers “intentionally causing harassment, alarm or distress”. The example can be found under the illustrations in section 3 of the Protection from Harassment Act, 2014.

¹³⁴ The complaint is grounded on the employer's neglect for working conditions and can result in “high fines”. Information is available at: <https://www.inspectieszw.nl/onderwerpen/pesten> [Sept. 2019].

ask support to the Cantonal Labour Inspectorate.¹³⁵ The latter mainly focus on prevention and counselling, but penal sanctions can be pursued in severe cases (Office cantonal de l'inspection et des relations du travail, 2018).



Addressing cyberbullying through existing measures against bullying and other unacceptable conducts

The existence of domestic legislation addressing conducts of cyberbullying, discussed at Subchapter 3.2 above, indicates that this phenomenon has already become a matter of concern for regulators. Considering current technological advancements, the use of ICT at work is likely to become even more pervasive, enhancing the likelihood of cyberbullying being committed and augmenting the associated risks for workers, employers and third parties. Because of this, it may be opportune to take regulatory initiatives that specifically address acts that correspond to cyberbullying, thereby signalling both politically and institutionally that these acts are just as unacceptable as any other act of violence or harassment (K. Lippel, 2010, p. 13).

These initiatives may be based on an evaluation of current legislative frameworks to verify whether they are up to date to deal with unacceptable conducts committed through ICT.¹³⁶

In Australia, the *Bowker* case¹³⁷ represents a positive example of how existing anti-bullying instruments can be interpreted to include instances of cyberbullying. The Australian Fair Work Act prohibits bullying “at work”.¹³⁸ In this judicial case, the aggressive behaviour was carried out through a series of Facebook posts. The Fair Work Commission adopted a notion of being bullied “at work” that was not confined to the “physical workplace”, and held that there was no requirement for the worker to be at the workplace at the time when the contents were posted online. It sufficed for her to access those comments while “at work”.

The Commission observed that “the concept of being ‘at work’ encompasses both the performance of work (at any time or location)” and “when the worker is engaged in some other activity which is authorised or permitted by their employer, or in the case of a contractor their principal (such as being on a meal break or accessing social media while performing work)”.¹³⁹

Even if this was sufficient to protect the worker in the case at hand, requiring the contents to be posted or accessed when “at work” could still fall short of offering adequate protections in instances in which conducts originating from work affect workers when they are not “at work”. In this respect, the Commission gave a couple of interesting examples. It referred to the case in which a person accesses bullying comments on social media at a time when they are not “at work”. In this case, the Commission observed, “the behaviour will not fall within the scope of [anti-bullying provisions]” something that would amount to an “arbitrary” result. It also referred to the possibility that “a worker receives a phone call from their supervisor about work related matters, while at home and outside their usual working hours”. In such an instance, the Commission wondered: “[is] the worker ‘at work’ when he or she engages in such a conversation?” According to the Commission “[in] most cases the answer will be yes, but it will depend on the context, including custom and practice, and the nature of the worker’s contract.”

¹³⁵ See ch.ch. “Labour disputes: who to contact”, <https://www.ch.ch/en/labour-disputes/> [Sept. 2019].

¹³⁶ In the United Kingdom, for instance, the House of Lords carried out an investigation that evaluated the use of criminal law in social media contexts, and concluded that: “the criminal law in this area, almost entirely enacted before the invention of social media, is generally appropriate for the prosecution of offences committed using the social media” (House of Lords, 2014, p. 6). It also pointed out that protection is also granted to victims of harassment through non-criminal remedies (House of Lords, 2014, p. 9).

¹³⁷ *Bowker and Others v DP World Melbourne Limited T/A DP World and Others*, [2014] FWCFB 9227, accessible at: <https://www.fwc.gov.au/anti-bullying-benchbook/when-worker-bullied-at-work/what-does-at-work-mean> [Sept. 2019].

¹³⁸ Part 6-4B Fair Work Act (2009).

¹³⁹ *Bowker*, cit.

Arguably, in a world in which work is increasingly carried out anytime and anywhere (Eurofound and ILO, 2017), the boundaries between work and private life become more and more blurred. In these circumstances, not only the notion of being physically “at the workplace” becomes inadequate to sufficiently counter unacceptable behaviours, but also the broader notion of being “at work” can fail to provide adequate protection. The spread of ICT arguably warrants an understanding of violence and harassment in the world of work that is not bound by specific physical or temporal limits and extends to conducts that originate – anytime and anywhere – from work. This would include conducts of perpetrators that have a work-based relation with the victim, including relations with clients, personnel of a principal or subcontracting company, etc. besides, of course, relations with employers, colleagues, supervisors and subordinates.

Indeed, sometimes, updating the legislation could be needed to ensure that regulation adequately tackles new forms of bullying and harassment, especially when the law predates the widespread use of ICT.

An example in which an existing instrument against bullying failed to provide adequate protection against cyberbullying can be found in a judgment of the Belgian Cour de Cassation.¹⁴⁰ The case concerned a woman who visited the toilet in a garage and noticed that a camera had videotaped her. At the time of the incident, she was at work for her employer and visited the garage in a professional capacity (O. Vanachter, 2018). The woman argued that being filmed while visiting the toilet could constitute bullying or sexual harassment. According to the Court of Appeal, under Belgian law,¹⁴¹ bullying, be it physical or psychological, involves “contact” between the victims and perpetrators. The woman observed that the use of the camera resulted in contact between her and the perpetrator. The Court of Appeal decided that there had been no “contact”, a judgment also later upheld by the Cour de Cassation (O. Vanachter, 2018). This interpretation of the “contact” requirement arguably renders the current legislation materially ineffective against some instances of cyberbullying.¹⁴²

This, however, does not mean that the “wheel needs to be reinvented” to tackle these issues. Cyberbullying is commonly framed as a continuation of offline bullying; the legislative and other regulatory provisions that are already in place can constitute a solid basis to start safeguarding workers, employers and others involved. Certain amendments may be opportune, nonetheless, both to specific legislation on bullying and harassment,¹⁴³ and more general provisions that can, however, be used to the advantage of victims of these behaviours. Other instruments concerning bullying and harassment may likewise have to receive updates. This could be done, for instance, by describing cases of cyberbullying as examples captured by the relevant company policy, code of conduct, etc.

It also seems equally important for primary legislation and other work-related regulations which tackle bullying and harassment, to expand their scope of protection not only to workers but also to other persons, including individuals exercising the authority, duties or responsibilities of an employer. Significantly, this is also in line with the approach of the ILO Convention and Recommendation on violence and harassment and what emerged during the relevant tripartite discussions.¹⁴⁴

¹⁴⁰ Cass. 17 January 2018, nr. P.17.0403.F.

¹⁴¹ Art. 32bis *juncto* 32ter Loi 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail.

¹⁴² As a reaction to this case, see, for example, P. Brasseur: “À moins qu’il se satisfasse des dispositions légales relatives à la protection de la vie privée, il incombe à présent au législateur fédéral d’introduire dans le Code pénal une disposition qui incrimine le comportement inadmissible dont il est ici question” (P. Brasseur, 2018, pp. 240).

¹⁴³ For an example of how specific legislation on harassment is amended in order to take the cyber element into account, see Loi n° 2018-703 du 3 août 2018 renforçant la lutte contre les violences sexuelles et sexistes (1).

¹⁴⁴ Reports of the Standard-Setting Committee on Violence and Harassment in the World of Work: Summary of proceedings, Provisional Record 8B(Rev.1), International Labour Conference, 2018, 4, 5, 17, 55, 56, 59, etc.

► Conclusion

Thus far, this paper has engaged in the discussion regarding the problematic nature of cyberbullying at work and whether current legislation and other regulations from various countries can prove adequate to tackle such behaviours. As discussed, the consequences of cyberbullying can affect not only the victims but also the whole business structure, as well as societies at large. The increasing spread of ICT in the world of work can augment the risk of occurrence of such a phenomenon.

As argued above, nonetheless, cyberbullying should not be perceived as something entirely disconnected from traditional bullying and harassment at work, but rather as a part of these phenomena that may or may not accompany more traditional manifestations thereof. This understanding has been crucial in advancing these tentative conclusions.

For lawmakers and public authorities

First of all, it would be opportune to verify that existing regulation adequately encompasses acts of cyberbullying, having due regard to its peculiarities. Updating some of the existing legislation against harassment and bullying might be necessary to capture ICT-based abuses. Addressing cyberbullying in regulation could raise employers' and workers' awareness of its seriousness and also provide some clarity on how to adequately prevent and combat this phenomenon.

Adjudicating bodies could also give adequate interpretations to anti-bullying legislation in the event of cyberbullying cases. An example mentioned above is the approach of the Fair Work Commission in Australia, which has interpreted some anti-bullying provisions of the Fair Work Act to be relevant for some instances of cyberbullying.

The newly adopted Violence and Harassment Convention of the ILO takes all of the above into account. Cyberbullying in the world of work is covered under article 3(d) of the Convention¹⁴⁵ as a situation of violence and harassment occurring "through work-related communications, including those enabled by information and communication technologies." Importantly, no physical or temporal barriers apply to this provision, which covers all forms of communications, provided they are work-related.¹⁴⁶

This instrument, therefore, requires that any ratifying State's regulation meant at countering unacceptable conducts at work such as bullying, harassment, stalking, etc. be assessed to ensure that conducts perpetrated through ICT are unfailingly included in its scope. It may be necessary, for instance, that anti-discrimination law also encompasses any act of ICT-enabled aggression that is based on a prohibited ground. Anti-victimization measures should also protect the victims of cyberbullying. In this respect, anti-harassment regulation could also be assessed to determine whether it adequately covers harassing acts occurring through ICT.

In addition to reformulating laws and regulations to encompass cyberbullying, it might be important for countries whose current domestic regulation only targets acts, including ICT-enabled ones, of harassment or bullying that are discriminatory, to examine the possibility to prohibit these behaviours, regardless of them being based on a prohibited ground. The relevant literature also discussed above provides ample proof of the very harmful consequences of these unacceptable behaviours, irrespective of their motives or drivers. These acts should arguably thus be prevented and combated *per se* and not only when they are discriminatory.

¹⁴⁵ Convention No. 190 "applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work: [...] (d) through work-related communications, including those enabled by information and communication technologies; [...]".

¹⁴⁶ The law and practice report issued by the International Labour Office noted that cyberbullying "can be carried out inside or outside the physical workplace, leading to confusion over whether the cyber-harassment is related to the world of work or not" (ILO, 2018a, p. 21). "The Office proposes conserving the broader reference to information and communication technologies, in order to encompass both cyberviolence and cyberharassment and any other forms of violence and harassment related to future technologies. The Office also considers that "work-related" can be read broadly and would not be limited to official means or platforms of communications provided by, or used on behalf of, the employer." ILO. 2018. Report V(2) Ending violence and harassment in the world of work, International Labour Conference, 107th Session (Geneva), pp. 27-28.

Victims' access to redress measures should be guaranteed. Given the severe consequences of unacceptable behaviours in the world of work and how the use of ICT can enhance the pervasiveness of these behaviours and their spread much beyond a single workplace, liability cannot be confined to the perpetrators or the employer of the victims. Arguably, extending these liabilities in situations where the contact between the victims and perpetrators is work-related, and also to include the employer of the perpetrators in these cases (e.g. cases in which a worker of a company victimizes the worker of a subcontractor) may be contemplated. Examples in line with this approach can be found in legislation and case law.¹⁴⁷ Borrowing an expression used in the ILO Violence and Harassment Convention, any such measures should be "commensurate with [the] degree of control" that can be exerted in the relevant circumstances.

All of the above should also lead to a notion of violence and harassment "in the world of work" that encompasses work-related conducts "anytime and anywhere" beyond spatial and temporal limits to combat cyberbullying – a phenomenon that makes it evident how technology can blur the boundaries between private and work life and how aggressive conducts may occur far beyond the confines of the "workplace". This necessitates a broad understanding of the "world of work" and of work-related issues. Cyberbullying makes it, at the same time, evident that a broad understanding of the possible perpetrators and victims is also necessary, given how pervasive and far-reaching these conducts may be. An inclusive definition of "workers" covered by the relevant measures is crucial in this respect (European Ombudsman, 2018). The rationale of protecting persons from violence and harassment in the world of work, in fact, lies in the need to protect human dignity¹⁴⁸ and the psychical and physical health and safety of people. Accordingly, protective measures should aim at having the broadest scope possible and be provided regardless of the employment status or the contractual arrangement of the potential victims. The ILO Violence and Harassment Convention and Recommendation adopt such an approach,¹⁴⁹ which is consequent to considering violence and harassment also as possible forms of "human rights violation or abuse" as stated in the Preamble of the Convention.

A general duty of care of employers concerning harassment and bullying, including through ICT, could also be set forth expressly in legislation, to encourage preventive and remedial measures in this field. Measures do not necessarily have to be legislative. For instance, Ireland introduced a "Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work" that prescribes specific preventive measures, which if followed entail that the employer complies with the Safety, Health and Welfare at Work Act 2005.¹⁵⁰

Alleviating the burden of proof of the victims, in non-criminal matters, could also be considered as it might make access to redress measures simpler. Under French law, for instance, once a worker presents facts that suggest the existence of harassment, it is for the defendants to prove that their actions do not constitute harassment and that their conducts are justified by objective elements unrelated to the harassment.¹⁵¹

The need to introduce a generalized duty to remove victims from specific sources of dangers or perpetrators from their targets to prevent attacks may also be examined. For instance, if an individual was subject to unacceptable behaviours coming from particular persons, e.g. a certain supervisor, client,

¹⁴⁷ See, for instance, Section 789FC Fair Work Act. Even before this Act was introduced, see, in case law: *Naidu v Group 4 Securitas Pty Ltd and Anor*, [2005] NSWSC 144. In this case, the Supreme Court of New South Wales (Australia) awarded exemplary damages in favour of a person, the employee of a subcontractor, who was subject to severe harassment and bullying practices by a manager of the principal company. Both the subcontractor and the principal company were held liable for the damages.

¹⁴⁸ Reference to "dignity" or "human dignity" is included in the regulatory provisions against bullying or harassment adopted in Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Chile, Colombia, Côte d'Ivoire, the Democratic Republic of Congo, the European Union, France, Guinea, Italy, Lithuania, Luxembourg, New Caledonia (France), Portugal, Quebec (Canada), Serbia, Slovakia, Slovenia, the United Kingdom.

¹⁴⁹ As already noted, Article 2 of Convention No. 190 states: "This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer" and it applies "to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas". See also ILO, 2019b, p. 8.

¹⁵⁰ More specifically their duty under section 8 (2) (b) of this Act and section (13) (1) (e).

¹⁵¹ See Art. L1154-1 Code du travail.

patron or supplier, they should – at the very least – be allowed not to liaise with the perpetrators in a professional capacity anymore, not even online, without suffering detrimental consequences.

Rehabilitation measures should furthermore be provided, to support victims to re-enter the workplace, if necessary (European Ombudsman, 2018). Counselling sessions can be provided in this context.

Effective remedies may have to be guaranteed to workers who lose their jobs for reasons related to unacceptable conducts.¹⁵² The European Committee of Social Rights of the Council of Europe, for instance, asks Members also to indicate whether reinstatement is available for employees that “have been pressured to resign because of moral (psychological) harassment”¹⁵³ or “when the worker has resigned because of the moral (psychological) harassment”.¹⁵⁴ Further policy initiatives could also go in the direction of making co-workers more responsive against bullying (B. Latane and J. M. Darley, 1970 referenced by P. C. Rodkin K. Fischer, 2012, p. 632). This can be done, for example, through empathy training and education (K. Börkqvist et al., 2000, p. 197; R.P. Ang and D.H. Goh, 2010, p. 395).

Lawmakers could also assess current regulation to verify whether courts and adjudicators are entrusted with an adequate range of powers to address unacceptable conducts in the world of work. Concerning redressive measures, the possibility of issuing injunctions to stop certain behaviours or to prohibit further aggressions or future contacts with the victims seems to be a crucial element in this field.¹⁵⁵ The ability to award adequate compensation of damages and sanctions should also be verified.¹⁵⁶ All these measures should equally be made available in case the conduct is carried out through ICT, and take into account that the use of ICT can affect some aspects of aggressive behaviours, such as repetition.¹⁵⁷

In addition to all this, ensuring that specific measures that target the particular nature of cyberbullying be available to courts and adjudicators should be considered. The review of legislation provided examples of provisions that allow for orders to take down or disable access to a particular content,¹⁵⁸ to reveal to the victim information that may help identify the perpetrator,¹⁵⁹ or enable to demand an online content host to identify the author of anonymous or pseudonymous communication.¹⁶⁰

Attention should be paid also to the role of labour inspectorates. Personnel in labour inspectorates should be adequately equipped to deal with the psychosocial risks at work that are connected with phenomena like harassment and bullying (D. Tsoukas et al., 2015), also when they occur through ICT tools. Research is needed to identify mechanisms that can make psychosocial hazards “visible” and allow to effectively redress them, along with training, mentoring and resourcing that enables inspectorates to apply these mechanisms in practice (R. Johnstone et al., 2011).

Including self-employed workers in the protection against unacceptable conducts in the world of work may also be carefully considered. Protection from harassment for self-employed workers could start being provided through anti-discrimination law, which sometimes includes provisions against bullying and harassment based on prohibited grounds. Anti-discrimination measures may also cover self-employed

¹⁵² Conclusions 2014 – Lithuania – Article 26-2, <http://hudoc.esc.coe.int/eng/i=2014/def/LTU/26/2/EN> [Sept. 2019]; Conclusions 2014 – Portugal – Article 26-2, <http://hudoc.esc.coe.int/eng/i=2014/def/PRT/26/2/EN>.

¹⁵³ Conclusions 2018 – Netherlands – Article 26-2, <http://hudoc.esc.coe.int/eng/i=2018/def/NLD/26/2/EN> [Sept. 2019].

¹⁵⁴ Conclusions 2018 – Turkey – Article 26-2, <http://hudoc.esc.coe.int/eng/i=2018/def/TUR/26/2/EN> [Sept. 2019].

¹⁵⁵ See Section 9 New Zealand Harassment Act 1997 about the application for restraining order; 789FF Australia Fair Work Act 2009 on the FWC and its capacity to make orders to stop bullying. It is important to note, however, that in Australia, a “stop-bullying application” cannot be successful if the employment contract has been terminated in the meantime. See Fair Work Commission, Philip Stone, [2018] FWC 6408 observing that the victim “[...] is no longer an employee and he has not provided any basis to the Commission which would indicate that there is a prospect of him returning to the workplace or any other basis where a future risk within the meaning of s.789FF(1)(b)(ii) of the Act could arise.”

¹⁵⁶ Section 3 concerning civil remedy United Kingdom Protection from Harassment Act 1997.

¹⁵⁷ Section 3.4 New Zealand Harassment Act 1997 as amended by the Harmful Digital Communications Act 2015, See above, subchapter 1.2.2.

¹⁵⁸ Section 6 Nova Scotia, Intimate Images and Cyber-Protection Act, 2017.

¹⁵⁹ Ibid.

¹⁶⁰ Section 19 Harmful Digital Communications Act 2015, available at: <http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM6124401> [Sept. 2019]. This can also be done through non-cybercrime specific legislation. See Section 4 South Africa Protection from Harassment Act, 2011.

persons.¹⁶¹ If harassment based on discriminatory grounds counts as “a form of discrimination”, consequently, self-employed workers should equally be protected against this form of discrimination.¹⁶² As discussed above, however, unacceptable conducts such as bullying and harassment should arguably be prohibited even if they are not based on discriminatory grounds. This would call for the extension of all existing regulations countering unacceptable conducts in the world of work to self-employed persons. This objective could also be pursued by ensuring that occupational safety and health measures that address bullying and harassment, and psychosocial hazards at work also cover the self-employed. This would arguably be in line with the ILO 2019 Centenary Declaration for the Future of Work, through which the ILO’s tripartite constituents also committed to “a world of work free from violence and harassment”. The Declaration affirms: “safe and healthy working conditions are fundamental to decent work” and “all workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account” also “safety and health at work”. Protecting self-employed workers from bullying and harassment, also when ICT-mediated, through OSH regulation could thus be a path to explore to further the objectives of the Declaration. This practice would also be coherent with the Violence and Harassment Convention, which applies to employees as well as all “persons working irrespective of their contractual status” and calls to implement its provisions “including by extending or adapting existing occupational safety and health measures to cover violence and harassment and developing specific measures where necessary”.¹⁶³ Including self-employed workers in OSH regulation would not be unprecedented. Beyond the Australian provisions mentioned above, which expressly do so also with regard to bullying, the European Commission recently recalled that at the EU level, “a [2003] Council Recommendation on self-employed [persons] encourages Member States to promote their safety and health and include them in the scope of their national legislation”.¹⁶⁴ The Commission also observed: “[b]efore the adoption of the Council Recommendation, very few Member States included [the self-employed] in their national occupational safety and health legislation. Since its adoption, about half the Member States have included them in their legislation with some variation in the definition of a self-employed, the scope of the relevant legislation and the extent of their obligations. Member States are hereby called to fully implement the Recommendation” (EU Commission, 2017, p. 15).

Measures against unacceptable conducts in the world of work, as already argued, should likewise take care of “upward” bullying, also channelled through ICT tools, against supervisors, managers, and employers, by including these subjects, wherever possible, in the scope of protection, an approach that, among other things would comply with the ILO Violence and Harassment Convention.

Moreover, as discussed above, the notion of violence and harassment in the world of work should include violence both perpetrated and suffered by third parties, such as clients, customers, users, etc. This makes it desirable to coordinate labour, commercial, civil and criminal regulation to ensure adequate protection for third parties who are victims of unacceptable conducts, including ICT-based ones.

The specific nature of cyberbullying may also warrant examining solutions that involve third parties, who are not the victims or perpetrators of bullying, such as, for instance, Internet providers, social networks and search engines. Some countries are discussing the possibility of enhancing the accountability of these subjects for some types of serious offences committed by their users (D. Cave, 2019; A. Guiton, 2019). It could be worthwhile to discuss whether these subjects should also be required to take adequate and effective steps in case of aggressive conducts. Something that could also be examined is the possibility for courts to order ICT providers or social networks to reasonably prevent and counter

¹⁶¹ For instance, citing the preparatory work of the Convention, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recalled that the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) applies to all workers, including the self-employed (ILO CEACR, 2012, pp. 307-308). See also Art. 2 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

¹⁶² See, for instance, articles 2 and 3, Decreto Legislativo 9 luglio 2003, n. 216 (Italy).

¹⁶³ Violence and Harassment Convention, 2019 (No. 190), Articles 2 and 12. An example of an OSH instrument that also covers the self-employed is the Australian Work Health and Safety Act 2011 (Section 7).

¹⁶⁴ See COUNCIL RECOMMENDATION of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers (2003/134/EC), available at: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:32003H0134> [Sept. 2019].

unacceptable behaviours¹⁶⁵ as well as preclude further unwanted contacts between the victims and the perpetrators. Users should, in any case, have the means to unfriend, block or report bullies and harassers on social networks (A. Fetters, 2018).

Finally, lawmakers may also promote collective agreements and binding internal policies aimed at combating the phenomena of violence and harassment in the world of work, including through ICT. These sources might also complement the employers' general duties of care, and provide for bespoke rights and responsibilities of workers, supervisors, and employers in a relevant sector or enterprise.

For social partners

Indeed, social partners seem willing to respond to the call. Collective agreements against violence and harassment in the world of work at the national, sectoral and company level have notably been adopted also in light of the Autonomous Framework Agreement on Harassment and Violence at Work (European Social Partners, 2011). The relevant national agreement in Denmark has led to a wide range of lower-level agreements to tackle mobbing, harassment and sexual harassment at work, especially at the company, municipal, and regional levels. A sectoral agreement exists in the telecommunications industry in France that provides for measures to prevent harassment and clearly states that harassment and violence are not allowed in enterprises. The agreement, furthermore, requires the employer to be vigilant even in the absence of specific reporting from workers when certain indicators, such as repeated personal conflicts, are present.¹⁶⁶ Deutsche Telekom concluded relevant company-level agreements – “managers and employees are offered targeted possibilities to discuss problems, prevent infringements and learn how to act adequately in the event of infringements. On the other side, infringements are punished uncompromisingly” (European Social Partners, 2011, p. 25). Existing agreements and policies against violence, harassment and bullying may also be assessed to make sure that conducts occurring through ICT are adequately covered. For instance, the Multi-sectoral guidelines to tackle third-party violence and harassment related to work explicitly state that “work-related third-party violence and harassment” could occur as “cyber-bullying/cyber-harassment through a wide range of information and communication technologies (ICT)” (European Social Dialogue, 2011). Beyond what lawmakers do, the social partners could, therefore, proceed with the negotiation of appropriate measures in the direction of what has been discussed so far (IBA Global Employment Institute, 2019, 66-67). A prominent example in this respect is the Guidance on Eliminating Shipboard Harassment and Bullying published in 2016 by the International Chamber of Shipping and the International Transport Workers' Federation. This Guidance also suggests adopting company policies on bullying and harassment that also tackle cyberbullying.¹⁶⁷

¹⁶⁵ For instance, see the conclusions of the Advocate General (AG) of the Court of Justice of the EU (CJEU), in the case C-18/2018 *Eva Glawischneg-Piesczek v Facebook Ireland Limited*. The official press release of the Court points out that, according to the AG: “Facebook can be ordered to seek and identify all comments identical to a defamatory comment that has been found to be illegal, and equivalent comments in so far as the latter originate from the same user” (CJEU, 2019). See also United States Court of Appeals, Fourth Circuit, 19 December 2018, 911 F.3d 674. A student-run feminist organization brought a sex discrimination claim against the University of Mary Washington. In order to assess the claim, the Court applied a “substantial control analysis”, which made it consider whether the University had control over the harasser. The contended behaviour was perpetrated “on Yik Yak, a now-defunct social media application. Yik Yak allowed its users within a limited geographic range to create and view anonymous messages known as “Yaks”.” While applying this analysis, the Court observed: “to the extent the University contends it was unable to control the harassers because the offending Yaks were anonymous, we readily reject that proposition. The Complaint alleges that the University never sought to identify the students who posted the offending messages on Yik Yak, even though some of those messages were facilitated by (i.e., posted through the use of) UMW’s network. Nor did the University ever ask Yik Yak to identify those users who had harassed and threatened UMW students. The University cannot escape liability based on facially anonymous posts when, according to the Complaint, UMW never sought to discern whether it could identify the harassers.”

¹⁶⁶ The Danish national agreement was signed by the Danish Working Environment Authority, the Employers' Confederation and LO-Trade Union Confederation, cited in J. Pillinger, 2017. The sectoral collective agreement in telecommunications in France, against harassment and violence at work can be found online: *harcèlement et à la violence au travail dans la branche des télécommunications*, Available at: https://humapp.com/article_convention/accord-relatif-au-harcèlement-et-à-la-violence-au-travail/ [Sept. 2019].

¹⁶⁷ The Guidance suggests to include a statement concerning cyberbullying in these policies and indicates that a “suitable statement” could be: “Cyber bullying is the use of modern communication technologies to harass, embarrass, humiliate, threaten, or intimidate an individual in an attempt to gain power and control over them. The use of the company’s communication equipment for such purposes will be treated as a serious breach of the company code of conduct and result in disciplinary action against perpetrators”. The Guidance is available at <https://www.ics-shipping.org/docs/default-source/Other-documents/guidance-on-eliminating-shipboard-harassment-and-bullying.pdf?sfvrsn=4>. We are thankful, without implicating him, to Victor Hugo Ricco for pointing this source to us.

Trade unions and employers' organizations also play a role in addressing cyberbullying and encouraging employers and workers to take preventive measures, to participate in training and to be aware of the dangers connected to violence and harassment in the world of work and to the specific challenges that technology poses in this respect. An interesting example in this domain is the "Code of practice Online rights@work" drafted by UNI and P&MS, which provides that "the right of employees to use enterprise communication facilities is subject to following conditions : Communication must be lawful and not include defamatory or libelous statements; Enterprise communication facilities shall not be used as a means of sexually harassing, or spreading offensive comments meant to discriminate; The employer can require a disclaimer when employees are communicating internally and externally to the effect that the views expressed are those of the author alone and not those of the enterprise" (UNI Global Union, 2000).

In this context, it is also crucial for workers' data to be collected and processed through ICT with adequate protection. The ILO Code of Practice on the protection of workers' personal data provides insightful guidance in this respect (International Labour Office, 1997, § 2). In the EU, article 88 of the General Data Protection Regulation (GDPR) also provides for a role of collective agreements in regulating the processing of data to ensure the protection of the rights and freedoms of workers. Interesting initiatives in this field have also been taken by social partners (see V. De Stefano, 2018; I. Armaroli et al., forthcoming.) For instance, the Danish trade union 3F recently concluded a collective agreement to regulate the terms and conditions of work of domestic workers whose activities are channelled through the labour platform Hilfr.dk. The agreement also includes a provision for data protection, which may serve as a blueprint for future collective bargaining concerning data protection as well as unacceptable behaviours. Firstly, the consent of the workers is needed to post their data on the platform, and this consent should be specific and informed. Moreover, workers "may, at any time, request that derogatory, false and offensive comments, pictures or characters be removed from [their] profile and other places on the platform that can be associated and clearly attributed to [them]." This kind of request "cannot adversely affect" the workers' "conditions of employment."¹⁶⁸ This protection is crucial in ensuring that workers are not penalized by negative or biased comments or feedbacks made by customers or other parties, something that can be extremely detrimental, particularly when algorithms are applied to decide whether other jobs will be offered.

It has also been observed that, in some cases, workers who experience bullying have a high probability to leave their job (D. Zapf and C. Gross, 2001, p. 515). Trade union representatives could be sensitized to pick up on signals of bullying at work. Social partners could also consider covering third parties as potential victims in collective regulation against unacceptable conducts in the world of work.

For employers

Employers' internal policies could make use of enterprise communication facilities and social media at work subject to certain conditions, and expressly prohibit perpetrating any unacceptable conduct through these tools. Workers should be well informed about these internal policies and of the conditions with which they need to comply when accessing the enterprise's ICT. This, for instance, could take place through mandatory and regular educational sessions or consultation with a business health and safety representative (C. Langos and M. Giancaspro, 2017). Employers may also consider technological advancements when drafting internal policies. In these contexts, timely threat assessments could be made for policies to address appropriate work behaviour and maintain their effectiveness in relation to new means of communication. Addressing the risks of "upward" violence and, when possible, covering third parties, such as subcontractors and their personnel, suppliers, clients, etc., both as potential perpetrators and victims of violence, might also be considered. Workers, and particularly supervisors and managers could also be given specific training to recognize and react to cases of cyberbullying and its risk factors (Acas, 2014; B. West et al., 2014, p. 613). The European Parliament's code of appropriate behaviour for members of the European Parliament in exercising their duties likewise notes that Members of Parliament "should take part in specialised training organised for them on preventing conflict and harassment in the workplace and on good office management" (European Parliament, 2019).

Social partners and employers can also contemplate establishing quick and cost-free alternative dispute resolution mechanisms. These mechanisms could be general or provided at sectoral or workplace

¹⁶⁸ This collective agreement is available at: <http://ow.ly/d/83Wv> [Sept. 2019].

level. Bodies designated to conduct these processes can vary, but they should always perform a thorough, independent and impartial investigation considering all the circumstances of each case. In Belgium, for instance, workers who deem to be victims of violence, bullying or sexual harassment at work may contact a “prevention counsellor” or a “trusted person”¹⁶⁹ to request either an informal or formal psychosocial intervention.¹⁷⁰ In France, as stated above, the Labour Code contains specific provisions on mediation procedures in case of harassment.¹⁷¹ Similarly, each business with more than 20 employees in Croatia “has a duty to appoint a person authorized to handle discrimination and harassment complaints” (IBA Global Employment Institute, 2019, p. 54). In this respect, it is worth noting that the Anti-Harassment and Bullying Policy of the Confederation of British Industry (CBI) provides that, upon receipt of a relevant complaint, “an appropriate manager, with the relevant experience and objectivity will be appointed to conduct a fair and thorough investigation alongside a member of HR” (CBI, pp. 3-4). Additional protective measures against dismissal can also be considered for workers going through this type of internal proceedings. Moreover, considering that victims of unacceptable conducts could be led to leave their jobs, the possibility for them to access the internal complaint mechanism, even at the end of their employment, or after, could also be examined.¹⁷²

For the International Labour Organization and the International Labour Office

In the framework of the current initiatives against violence and harassment in the world of work, it would be desirable that the International Labour Office incorporates ICT-mediated conducts in its efforts concerning equality and contrast to violence in the world of work.

Further interdisciplinary research on violence perpetrated through ICT tools and cyberbullying is essential at this stage. In particular, research is needed in determining how cyberbullying can affect workers in manual and lower-skilled occupations since current literature has mainly focused on professional workers. ICT are also increasingly used in blue-collar jobs and manual occupations, an example being wearable devices that are used to direct the workforce, for instance, in warehouses. Research in this field is still too scarce, and so are studies on how the use of technological devices to monitor and direct the workforce can facilitate or increase the risk of cyberbullying. Pioneering studies, however, suggest that: “risks of [physical and psychosocial violence and harassment] are exacerbated by the ways that apps intensify the rate of work through joining drivers with customers by algorithm, a prescriptive [digitalized management methods]” (P. V. Moore, 2018, 7). Research on the augmented emotional detachment of supervisors vis-à-vis their subordinates managed through digitalized management methods is also needed. In this respect, also behavioural-studies research would be extremely valuable. Studies on “upward bullying”, including via ICT-tools, against supervisors, managers, and employers and the impact of such activity on the person and enterprise are also scarce; the same is true for research on the implications of unacceptable conducts in the worlds of work on third parties. Research in these areas is warranted.

The measures suggested so far are only examples, of course, and new measures could particularly be made necessary by technological advancements yet to occur. It is crucial, however, that all actors are already aware of the challenges that the spread of ICT tools in the world of work poses in terms of the risk of violence and harassment. Minimizing these risks requires constant awareness and continuous monitoring of existing practices and regulation, and a proactive approach of regulators, institutions, social partners and researchers to react to novel developments in this field. This will require significant

¹⁶⁹ This *personne de confiance* is available in case of suffering at work, such as because of instances of harassment, to inform, listen, advise and help workers find solutions to resolve the problematic situation. Employers may designate an employee or a person external to the company as a trusted person. At least one of the trusted persons must be part of the company's staff (unless the employer employs less than 20 workers), if the prevention counsellor is part of an external service for prevention and protection at work. See http://www.emploi.belgique.be/detailA_Z.aspx?id=1366#.

¹⁷⁰ Art. 32nonies of the Law on the welfare of workers in the performance of their work (Loi relative au bien-être des travailleurs lors de l'exécution de leur travail). Prevention counsellors are normally external persons, unless the employer has more than 50 employees, in which case the counsellor can also be internalized. Conditions differ depending on the external or internal nature of the prevention counsellor. The *confidante* or “la personne de confiance” assists the prevention adviser.

¹⁷¹ Art. L.1152-6 of the Code du Travail.

¹⁷² The CBI Anti-Harassment and Bullying Policy, for instance, provides: “Although we encourage complaints to be raised at the time, should an employee raise an issue of harassment or bullying at the time of their leaving the CBI's employment, for example within a letter of resignation or during an exit interview, then this should also be treated seriously and investigated in the same manner as the above. After appropriate investigation and consideration, the employee will be provided with a written response to their claim.”

efforts and resources, but it is essential to make sure that technological advancements result in progress for all members of societies, which is also one of the fundamental and most exciting challenges for the ILO as it enters its second century.

► ANNEX

APPENDIX I

Summary of conclusions

This Appendix summarizes some of the measures that the authors analyse in Chapter 5 of this study. Measures are subdivided based on the relevant potential actors. We want to reiterate, in this context, that this table is based on our own opinions and does not necessarily reflect the views of the International Labour Office and the International Labour Organization.

Lawmakers
Existing legislation on unacceptable conducts in the world of work would have to be evaluated in order to ascertain whether: - It covers conducts perpetrated via ICT tools; - It has a sufficiently broad understanding of what is a work-related conduct; - Countries whose domestic regulation only targets acts of harassment or bullying, including cyberbullying, that are discriminatory, could examine the possibility to prohibit these behaviours regardless of them being based on a prohibited ground; - The introduction of easily accessible court procedures to obtain injunctions to stop unacceptable conducts or have publicly available harmful content removed should be examined; - Making courts able to order online content hosts to assist in identifying the author of harmful anonymous or pseudonymous communication, to take down or disable access to a particular content, and to reveal to the victim information that may help identify the perpetrator could be contemplated; - Courts should be made able to award adequate compensation of damages and sanctions and issue orders to cease unacceptable conducts and refrain from carrying out them in the future; - Alleviating the burden of proof of the victims to gain compensation or redress, in non-criminal matters, could be considered; - The role of labour inspectorates to prevent and counter unacceptable conducts in the world of work could be clarified; - Personnel in labour inspectorates should be adequately equipped to deal with the emerging psychosocial risks at work that are connected with phenomena like harassment and bullying; - The role, responsibilities and duties of third parties who are not the victims or perpetrators of bullying, such as, for instance, Internet providers, social networks, network providers and search engines to counter unacceptable conducts perpetrated via ICT tools could be clarified; - Measures may be introduced to protect supervisors, managers and, wherever possible, employers from harassment and bullying, including through ICT, perpetrated by those with whom they come into contact in their professional capacity; - Existing legislation may be evaluated in order to ascertain whether “upward” bullying, including via ICT-tools, is adequately covered; - The introduction of a general duty of care of employers concerning harassment and bullying, including through ICT, can also be expressly set forth in legislation, to encourage preventive and remedial measures in this field; - Workers who have been pressured into resigning or felt compelled to resign because of bullying or harassment could be granted a right to reinstatement; - Rehabilitation measures, such as counselling sessions, should be provided, to support victims of bullying to re-enter the world of work; - Labour policies and regulations could be enacted, when appropriate, in order to address situations where violence and harassment, including when committed through ICT tools, is suffered by third parties in the world of work. Lawmakers should pay heed to the world-of-work implications of unacceptable conducts also when dealing with criminal, commercial and civil regulation.
Lawmakers, Social Partners, Employers
- Risk prevention strategies could be developed, which prevent bullying and cyberbullying, by countering conditions in the work environment that could give rise to such behaviours. These strategies should be periodically reviewed to keep them up to date; - Legislation, collective agreements and internal policies may establish quick and cost-free alternative dispute resolution mechanisms. The bodies involved should always perform a thorough, independent and impartial investigation. These mechanism should not prevent victims from access to courts; - Initiatives should be considered that aim at raising awareness on unacceptable conducts in the world of work, including bullying and cyberbullying. Workers, and particularly supervisors and managers, should receive training in order to recognize and adequately deal with bullying and risk factors that incite bullying; - Extension of any legislation, collective agreement and internal policy against unacceptable conducts in the world of work, including when committed through ICT tools, to all workers, regardless of their contractual status could be considered; - Extension of any legislation, collective agreement and internal policy that consider unacceptable conducts in the world of work, including when committed through ICT tools, based on prohibited grounds as a form of discrimination to self-employed workers could be considered; - Extension of any legislation, collective agreement and internal policy providing for OSH-based measures against unacceptable conducts in the world of work, including when committed through ICT tools, to self-employed workers could be considered.
Social partners, Employers

Existing collective agreements and internal policies against violence, harassment, and bullying may be assessed to make sure that conducts occurring through ICT are adequately covered;

Collective agreements and internal policies may recognize the potential need for support of co-workers. Co-workers could be made more responsive against unacceptable conducts through, for example, training and education;

Setting forth timely threat assessments in collective agreements and internal policies should be considered;

Collective agreements and internal policies could raise awareness on the possibility of third parties to be victims as well as perpetrators of unacceptable conducts in the world of work, including via ICT tools.

Social partners

Collective agreements could regulate the collection and processing of workers' personal data and the use of ICT tools to manage the workforce to ensure that this does not result in unacceptable conducts, driven, for example, by emotional detachment from supervisors, managers, employers and third-parties;

Collective agreements could include supervisors, managers and, wherever possible, employers in the scope of provisions against unacceptable conducts in the world of work, including when committed through ICT;

Collective agreements could include provisions that address bullying and harassment, including cyberbullying, in the world of work.

Employers

Including provisions that address bullying and harassment, including cyberbullying, in the world of work in internal policies could be considered;

Workers may be informed about their obligations and responsibilities when accessing the enterprise's communication infrastructure, including about conducts that are not tolerated, amongst others in relation to third parties.

Workers' organizations

Sensitizing workers and especially union representatives in order to pick up on signals of bullying and cyberbullying at work, for instance, through training or sharing best practices could be considered.

The International Labour Office

Carry out research, including behavioural research:

To determine how cyberbullying can affect workers in manual and lower-skilled occupations;

On whether the use of technological devices to monitor and direct the workforce can facilitate or increase the risk of cyberbullying

On the augmented emotional detachment of supervisors vis-à-vis their subordinates managed through digitalized management methods;

On "upward" bullying, including via ICT-tools, against supervisors, managers, and employers and the impact of such activity on persons and enterprises;

On the implications of unacceptable conducts in the worlds of work on third parties.

APPENDIX II

This Appendix reports examples of regulatory provisions that are material for the scope of this study.

PART I includes examples of regulatory provisions concerning bullying or harassment that are relevant for the world of work.

PART II includes examples of regulatory provisions concerning unacceptable behaviours perpetrated by means of ICT tools.

Courtesy translations into English from other languages are made by the authors of this study, also by using translation tools. The Authors apologize in advance if these translations result into some inaccuracies, and remain the sole responsible for these inaccuracies. If unofficial translations from other sources have been used to help, these sources have been indicated.

PART I: Examples of regulatory provisions concerning bullying or harassment that are relevant for the world of work

JURISDICTION:	PROVISION:
<u>ALBANIA</u>	Art. 3 Ligj n° 10221 per mbrojtjen nga diskriminimi Art. 3 Law No. 10221 on Protection against Discrimination
"Shqetësim" është ajo formë e diskriminimit që ndodh në rastin e një sjelljeje të padëshiruar, kur lidhet me cilëndo nga shkaqet e përmendura në nenin 1 të këtij ligji, që ka për qëllim apo efekt cenimin e dinjitetit të personit dhe krijimin e një mjedisi frikësues, armiqësor, përçmues, poshtëruës a ofendues për atë person, si dhe në rastin e një trajtimi më pak të favorshëm, i kryer si rezultat i kundërshtimit ose i mosnënshtrimit nga ana e personit të cenuar ndaj një sjelljeje të tillë.	

“Annoyance”: is that form of discrimination that occurs in the case of an undesirable conduct, when it is related to any of the causes mentioned in article 1 of this law [“discrimination”], which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment for that person, as well as in the case of a less favourable treatment performed as a result of an objection or failure to submit by the person infringed on by such a behaviour. For this translation see: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf [Sept. 2019].	
ALBERTA (CANADA)	Section 1 Occupational Health and Safety Act, SA 2017, c O-2.1
“Harassment” means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation to a worker, or adversely affects the worker’s health and safety, and includes i. conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression and sexual orientation, and ii. a sexual solicitation or advance, but excludes any reasonable conduct of an employer or supervisor in respect of the management of workers or a work site;	
AUSTRALIA	789FD Fair Work Act 2009
(1) A worker is bullied at work if: (a) while the worker is at work in a constitutionally-covered business: (i) an individual; or (ii) a group of individuals; repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and (b) that behaviour creates a risk to health and safety.	
AUSTRIA	§ 8a Bundes-Gleichbehandlungsgesetz, Fassung § 8a Federal Equal Treatment Act
Belästigung § 8a. (1) Eine Diskriminierung auf Grund des Geschlechtes liegt auch vor, wenn die Dienstnehmerin oder der Dienstnehmer im Zusammenhang mit seinem Dienst- oder Ausbildungsverhältnis durch geschlechtsbezogene Verhaltensweisen 1. von der Vertreterin oder vom Vertreter des Dienstgebers selbst belästigt wird, 2. durch die Vertreterin oder den Vertreter des Dienstgebers dadurch diskriminiert wird, indem sie oder er es schuldhaft unterlässt, im Falle einer Belästigung durch Dritte eine angemessene Abhilfe zu schaffen oder 3. durch Dritte belästigt wird. (2) Geschlechtsbezogene Belästigung liegt vor, wenn ein geschlechtsbezogenes Verhalten gesetzt wird, das die Würde einer Person beeinträchtigt oder dies bezweckt, für die betroffene Person unerwünscht, unangebracht, entwürdigend, beleidigend oder anstößig ist und 1. eine einschüchternde, feindselige oder demütigende Arbeitsumwelt für die betroffene Person schafft oder dies bezweckt oder 2. bei dem der Umstand, dass die betroffene Person eine geschlechtsbezogene Verhaltensweise seitens einer Vertreterin oder eines Vertreters des Dienstgebers oder einer Kollegin oder eines Kollegen zurückweist oder duldet, ausdrücklich oder stillschweigend zur Grundlage einer Entscheidung mit Auswirkungen auf den Zugang dieser Person zur Aus- und Weiterbildung, Beschäftigung, Weiterbeschäftigung, Beförderung oder Entlohnung oder zur Grundlage einer anderen Entscheidung über das Dienst- oder Ausbildungsverhältnis gemacht wird. (3) Eine Diskriminierung liegt auch bei Anweisung zur Belästigung einer Person vor.	
Harassment § 8a. (1) Discrimination on grounds of gender shall also be deemed to exist if the employee, in connection with his or her employment or training relationship, by means of a gender-related conduct 1. is harassed by the representative of the employer himself or herself, 2. the employer's representative discriminates against him or her by culpably failing to provide adequate relief in the event of harassment by third parties, or 3. is harassed by third parties. (2) Gender-based harassment occurs when gender-related conduct is committed which impairs the dignity of a person or is intended to do so, is undesirable, inappropriate, degrading, insulting or offensive to the person concerned, and 1. creates or aims to create an intimidating, hostile or humiliating working environment for the person concerned; or 2. in which the fact that the person concerned rejects or tolerates a sex-related conduct on the part of a representative of the employer or a colleague is expressly or implicitly made the basis of a decision affecting that person's access to training, employment, further employment, promotion or remuneration or the basis of another decision on the service or training relationship. (3) Discrimination shall also include instructions to harass a person.	
BELGIUM	Art. 32ter loi 4 août 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail Art. 32ter Act of 4 august 1996 on the well-being of workers in the performance of their work

Harcèlement moral au travail: Ensemble abusif de plusieurs conduites similaires ou différentes, externes ou internes à l'entreprise ou l'institution, qui se produisent pendant un certain temps, qui ont pour objet ou pour effet de porter atteinte à la personnalité, la dignité ou l'intégrité physique ou psychique d'un travailleur ou d'une autre personne à laquelle la présente section est d'application, lors de l'exécution de son travail, de mettre en péril son emploi ou de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant et qui se manifestent notamment par des paroles, des intimidations, des actes, des gestes ou des écrits unilatéraux. Ces conduites peuvent notamment être liées à l'âge, à l'état civil, à la naissance, à la fortune, à la conviction religieuse ou philosophique, à la conviction politique, à la conviction syndicale, à la langue, à l'état de santé actuel ou futur, à un handicap, à une caractéristique physique ou génétique, à l'origine sociale, à la nationalité, à une prétendue race, à la couleur de peau, à l'ascendance, à l'origine nationale ou ethnique, au sexe, à l'orientation sexuelle, à l'identité et à l'expression de genre.	
Harassment at work: An abusive set of several similar or different behaviours, external or internal to the undertaking or institution, which occur over a certain period of time, the purpose or effect of which is to harm the personality, dignity or physical or psychological integrity of a worker or other person to whom this Section applies, in the performance of his or her work, to endanger his or her employment or to create an intimidating, hostile, degrading, humiliating or offensive environment, manifested in particular by unilateral words, intimidation, acts, gestures or writings. Such conduct may be linked in particular to age, marital status, birth, property, religious or philosophical conviction, political conviction, trade union conviction, language, current or future health status, disability, physical or genetic characteristic, social origin, nationality, alleged race, skin colour, ancestry, national or ethnic origin, sex, sexual orientation, gender identity and expression.	
<u>BOSNIA AND HERZEGOVINA</u>	Art. 4 Zakon o Zabrani Diskriminacije Art. 4 Law on the Prohibition of Discrimination
(1) Uznemiravanje je svako neželjeno ponašanje uzrokovano nekom od osnova iz člana 2. stav (1) ovog Zakona koje ima za cilj ili stvarno predstavlja povredu dostojanstva osobe i stvaranje zastrašujućeg, neprijateljskog, degradirajućeg, ponižavajućeg ili uvredljivog okruženja. (2) Seksualno uznemiravanje je svaki oblik neželjenog verbalnog, neverbalnog ili fizičkog ponašanja spolne prirode čiji je cilj ili efekat povreda dostojanstva lica, posebno kada se njime stvara zastrašujuće, neprijateljsko, degradirajuće, ponižavajuće ili uvredljivo okruženje. (3) Mobing je oblik nefizičkog uznemiravanja na radnom mjestu koji podrazumijeva ponavljanje radnji koje imaju ponižavajući efekat na žrtvu čija je svrha ili posljedica degradacija radnih uslova ili profesionalnog statusa zaposlenog.	
Harassment shall be considered discrimination in every situation when behaviour is related to one of mentioned grounds from Article 2 that aims for or has an effect of harming person's dignity and creating intimidating, hostile, degrading, humiliating or offensive atmosphere. Sexual harassment shall be considered every form of unwanted verbal, non- verbal or physical behaviour of sexual nature which aims for or has effect of harming dignity of a person, especially when it creates fearful, hostile, degrading, humiliating or offensive environment. Mobbing shall be considered every form of non- physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee's working conditions or professional status as a consequence. For translation see: https://www.refworld.org/docid/4d302a9f2.html [Sept. 2019].	
<u>BULGARIA</u>	Additional provision закон за защита от дискриминация Additional provision Act on Protection from Discrimination
1. "Тормоз" е всяко нежелано поведение на основата на признаците по чл. 4, ал.1, изразено физически, словесно или по друг начин, което има за цел или резултат накърняване достойнството на лицето и създаване на враждебна, обидна или застрашителна среда.	
Harassment is defined as any unwanted conduct on grounds of [gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party,] expressed in a physical, verbal or any other manner, which has the purpose or the effect of violating the person's dignity or creating a hostile, degrading, humiliating or intimidating environment, attitude or practice. Translation is based on: http://hudoc.esc.coe.int/eng?i=2014/def/BGR/26/2/EN [Sept. 2019].	
<u>CHILE</u>	Art. 2.o Código del trabajo Art. 2. Labour Code
Acoso laboral Asimismo, es contrario a la dignidad de la persona el acoso laboral, entendiéndose por tal toda conducta que constituya agresión u hostigamiento reiterados, ejercida por el empleador o por uno o más trabajadores, en contra de otro u otros trabajadores, por cualquier medio, y que tenga como resultado para el o los afectados su menoscabo, maltrato o humillación, o bien que amenace o perjudique su situación laboral o sus oportunidades en el empleo.	
Likewise, harassment at work is contrary to the dignity of the person; [harassment at work] is understood as any conduct that constitutes repeated aggression or bullying, exercised by the employer or by one or more workers, against one or more workers, by any means, and that results in the affected party or parties being undermined, mistreated or humiliated, or that threatens or harms their employment condition or their employment opportunities.	
<u>COLOMBIA</u>	Art. 2 Ley 1010 de 2006 Por medio de la cual se adoptan medidas para prevenir, corregir y sancionar el acoso laboral y otros hostigamientos en el marco de las relaciones de trabajo Art. 2 Act No. 1010 of 2006 adopting measures to prevent, correct and punish harassment at work and other harassment in the context of employment relations

Definición y modalidades de acoso laboral Para efectos de la presente ley se entenderá por acoso laboral toda conducta persistente y demostrable, ejercida sobre un empleado, trabajador por parte de un empleador, un jefe o superior jerárquico inmediato o mediato, un compañero de trabajo o un subalterno, encaminada a infundir miedo, intimidación, terror y angustia, a causar perjuicio laboral, generar desmotivación en el trabajo, o inducir la renuncia del mismo. En el contexto del inciso primero de este artículo, el acoso laboral puede darse, entre otras, bajo las siguientes modalidades generales: 1. Maltrato laboral. Todo acto de violencia contra la integridad física o moral, la libertad física o sexual y los bienes de quien se desempeñe como empleado o trabajador; toda expresión verbal injuriosa o ultrajante que lesione la integridad moral o los derechos a la intimidad y al buen nombre de quienes participen en una relación de trabajo de tipo laboral o todo comportamiento tendiente a menoscabar la autoestima y la dignidad de quien participe en una relación de trabajo de tipo laboral. 2. Persecución laboral: toda conducta cuyas características de reiteración o evidente arbitrariedad permitan inferir el propósito de inducir la renuncia del empleado o trabajador, mediante la descalificación, la carga excesiva de trabajo y cambios permanentes de horario que puedan producir desmotivación laboral.	
Definition and modalities of workplace harassment For the purposes of this law, workplace harassment shall be understood as any persistent and demonstrable conduct, exercised on an employee or a worker by an employer, a chief or an immediate or intermediate supervisor, a co-worker or a subordinate, aimed at instilling fear, intimidation, terror and anguish, causing harm to work, generating demotivation at work, or inducing the resignation of the same individual. In the context of the first paragraph of this article, harassment at work may occur, among others, under the following general modalities: 1. Labour mistreatment. Any act of violence against the physical or moral integrity, physical or sexual freedom and property of anyone who works as an employee or worker; any insulting or outrageous verbal expression that injures the moral integrity or the rights to privacy and good name of those who are in employment or any behavior that tends to undermine the self-esteem and dignity of anyone who is in employment. 2. Labor persecution: any conduct whose characteristics of reiteration or evident arbitrariness allow inferring the purpose of inducing the resignation of the employee or worker, by means of disqualification, excessive workload.	
CÔTE D'IVOIRE	Art. 5 Code du Travail Art. 5 Labour Code
Harcèlement sexuel: Les comportements abusifs, les menaces, les attaques, les paroles, les intimidations, les écrits, les attitudes; les agissements répétés à l'encontre d'un salarié, ayant une connotation sexuelle, dont le but est d'obtenir des faveurs de nature sexuelle à son profit ou au profit d'un tiers. Harcèlement moral: Les comportements abusifs, les menaces, les attaques, les paroles, les intimidations, les écrits, les attitudes, les agissements répétés à l'encontre d'un salarié, ayant pour objet ou pour effet la dégradation de ses conditions de travail et qui comme tels sont susceptibles de porter atteinte à ses droits et sa dignité, d'altérer sa santé physique ou mentale ou de compromettre son avenir professionnel.	
Sexual harassment: Abusive behaviour, threats, attacks, words, intimidations, writings, attitudes; repeated actions against an employee that have a sexual connotation, the purpose of which is to obtain favours of a sexual nature for one's own advantage or for the advantage of a third party. Moral harassment: Abusive behaviour, threats, attacks, words, intimidations, writings, attitudes, repeated actions against an employee, the purpose or effect of which is the degradation of his working conditions and that, as such, are likely to violate their rights and dignity, to alter their physical or mental health or to compromise their professional future.	
DEMOCRATIC REPUBLIC OF CONGO	Arrêté ministériel n° 12/CAB.MIN/TPS/114/2005 du 26 octobre 2005 portant interdiction du harcèlement sexuel ou moral dans l'exécution d'un contrat du travail Ministerial Order No. 12/CAB.MIN/TPS/114/2005 of 26 October 2005 prohibiting sexual or moral harassment in the performance of an employment contract
« Harcèlement sexuel » : 1° le fait pour toute personne d'exercer sur autrui des agissements dans le but d'obtenir des faveurs de nature sexuelle à son profit ou au profit d'un tiers. 2° toute pratique consistant à se prévaloir de son autorité pour faire pression sur une personne, afin d'en obtenir des faveurs de nature sexuelle, pour son propre compte ou pour le compte d'un tiers. Par pression, on entend le fait de proférer des menaces, d'intimer des ordres ou soumettre à des contraintes. « Harcèlement moral » : un ensemble d'agissements répétés qui ont pour objet ou pour effet une dégradation des conditions de travail susceptible de porter atteinte aux droits du travailleur ou de l'employeur ainsi qu'à sa dignité, d'altérer sa santé physique ou mentale ou de compromettre son avenir professionnel, et cela dans le but d'obtenir indûment des droits ou des avantages quelconques.	
"Sexual harassment": (1) the conduct of any person who acts on any other person in order to obtain favours of a sexual nature for their own benefit or for the benefit of a third party. (2) any practice of using one's authority to put pressure on a person, in order to obtain favours of a sexual nature, on their own account or on the account of a third party. "Pressure" means making threats, giving orders or imposing constraints. "Moral harassment": A series of repeated acts which have as their purpose or effect a deterioration in working conditions likely to affect the rights of the worker or employer as well as their dignity, to impair their physical or mental health or to compromise their professional future, with the aim of unduly obtaining any rights or benefits whatsoever.	
EUROPEAN UNION	Art. 2 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

English version

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Dutch version

3. Intimidatie wordt als een vorm van discriminatie in de zin van lid 1 beschouwd als er sprake is van ongewenst gedrag dat met een van de in artikel 1 genoemde gronden verband houdt, en tot doel of gevolg heeft dat de waardigheid van de persoon wordt aangetast en een bedreigende, vijandige, beledigende, vernederende of kwetsende omgeving wordt gecreëerd. Het begrip intimidatie kan in dit verband worden gedefinieerd in overeenstemming met de nationale wetgeving en praktijken van de lidstaten.

French version

3. Le harcèlement est considéré comme une forme de discrimination au sens du paragraphe 1 lorsqu'un comportement indésirable lié à l'un des motifs visés à l'article 1er se manifeste, qui a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant. Dans ce contexte, la notion de harcèlement peut être définie conformément aux législations et pratiques nationales des États membres.

German version

(3) Unerwünschte Verhaltensweisen, die mit einem der Gründe nach Artikel 1 in Zusammenhang stehen und bezwecken oder bewirken, dass die Würde der betreffenden Person verletzt und ein von Einschüchterungen, Anfeindungen, Erniedrigungen, Entwürdigungen oder Beleidigungen gekennzeichnetes Umfeld geschaffen wird, sind Belästigungen, die als Diskriminierung im Sinne von Absatz 1 gelten. In diesem Zusammenhang können die Mitgliedstaaten den Begriff "Belästigung" im Einklang mit den einzelstaatlichen Rechtsvorschriften und Gepflogenheiten definieren.

Italian version

3. Le molestie sono da considerarsi, ai sensi del paragrafo 1, una discriminazione in caso di comportamento indesiderato adottato per uno dei motivi di cui all'articolo 1 avente lo scopo o l'effetto di violare la dignità di una persona e di creare un clima intimidatorio, ostile, degradante, umiliante od offensivo. In questo contesto, il concetto di molestia può essere definito conformemente alle leggi e prassi nazionali degli Stati membri.

Polish version

3. Molestowanie uważa się za formę dyskryminacji w rozumieniu ust. 1, jeżeli ma miejsce niepożądane zachowanie mające związek z jedną z przyczyn określonych w art. 1, a jego celem lub skutkiem jest naruszenie godności osoby i stworzenie onieśmielającej, wrogiej, poniżającej, upokarzającej lub uwłaczającej atmosfery. W tym znaczeniu pojęcie molestowania może być definiowane zgodnie z ustawodawstwem i krajową praktyką Państw Członkowskich.

Spanish version

3. El acoso constituirá discriminación a efectos de lo dispuesto en el apartado 1 cuando se produzca un comportamiento no deseado relacionado con alguno de los motivos indicados en el artículo 1 que tenga como objetivo o consecuencia atentar contra la dignidad de la persona y crear un entorno intimidatorio, hostil, degradante, humillante u ofensivo. A este respecto, podrá definirse el concepto de acoso de conformidad con las normativas y prácticas nacionales de cada Estado miembro.

FRANCE

L1152-1 Code du Travail

L1152-1 Labour Code

Harcèlement moral:

Aucun salarié ne doit subir les agissements répétés de harcèlement moral qui ont pour objet ou pour effet une dégradation de ses conditions de travail susceptible de porter atteinte à ses droits et à sa dignité, d'altérer sa santé physique ou mentale ou de compromettre son avenir professionnel.

No employee shall be subjected to repeated acts of psychological harassment which have as their purpose or effect a deterioration in their working conditions likely to affect their rights and dignity, to alter their physical or mental health or to compromise their professional future.

GUINEA

Artt. 7-8 Code du Travail

Artt. 7-8 Labour Code

Harcèlement moral au travail

les conduites abusives et répétées de toute origine, externe ou interne à l'entreprise qui se manifestent notamment par des comportements, des paroles, des intimidations, des actes, des gestes et des écrits unilatéraux, ayant pour objet ou pour effet de porter atteinte à la personnalité, la dignité ou l'intégrité physique ou psychique d'un employeur ou d'un travailleur en milieu de travail, de mettre en péril l'entreprise ou l'emploi ou de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant.

Harcèlement sexuel

toute forme de comportement verbal, non verbal ou corporel de nature sexuelle, qui affecte la dignité de femmes ou d'hommes en milieu du travail. Il en est de même pour toute conduite de nature sexuelle qui a pour effet de créer un environnement de travail intimidant, hostile ou humiliant pour une personne.

Moral harassment at work

abusive and repeated conduct of any origin, external or internal to the company, manifested in particular by behaviour, words, intimidation, acts, gestures and unilateral writings, the purpose or effect of which is to harm the personality, dignity or physical or psychological integrity of an employer or worker at work, to endanger the enterprise or employment [of someone] or to create an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment

any form of verbal, non-verbal or physical behaviour of a sexual nature that affects the dignity of women or men at work. The same applies to any conduct of a sexual nature that has the effect of creating an intimidating, hostile or humiliating work environment for a person.

ITALY	Art. 2 Decreto Legislativo 9 luglio 2003, n. 216 "Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro" Art. 2 Legislative Decree No 216 of 9 July 2003 "Implementation of Directive 2000/78/EC on equal treatment in employment and occupation"
3. Sono, altresì, considerate come discriminazioni, ai sensi del comma 1, anche le molestie ovvero quei comportamenti indesiderati, posti in essere per uno dei motivi di cui all'articolo 1, aventi lo scopo o l'effetto di violare la dignità di una persona e di creare un clima intimidatorio, ostile, degradante, umiliante od offensivo. 3. Harassment or unwanted conduct, carried out for one of the reasons referred to in Article 1, with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive climate, shall also be considered as discrimination within the meaning of paragraph 1.	
LITHUANIA	Art. 2 moterų ir vyrų lygių galimybių įstatymas Art. 2 Law on Equal Opportunities for Women and Men
Priekabiavimas – nepageidaujamas elgesys, kai dėl asmens lyties siekiama įžeisti arba įžeidžiamas asmens orumas ir siekiama sukurti arba sukuriama bauginanti, priešiška, žeminanti ar įžeidžianti aplinka. Harassment is defined as any unwanted conduct, whereby on the grounds of sex, race, nationality, language, origin, social status, religion, convictions or beliefs, age, sexual orientation, disability, ethnic group, a person seeks to offend or offends human dignity and attempts to create or creates an intimidating, hostile, humiliating or abusive environment. Translation is in part based on: http://hudoc.esc.coe.int/eng?i=2014/def/LTU/26/2/EN [Sept. 2019].	
LUXEMBOURG	Section 2 Règlement grand-ducal du 15 décembre 2009 portant déclaration d'obligation générale de la convention relative au harcèlement et à la violence au travail conclue entre les syndicats OGB-L et LCGB, d'une part, et l'UEL, d'autre part Section 2 Grand-Ducal Regulation of 15 December 2009 declaring the general obligation of the agreement on harassment and violence at work concluded between the OGB-L and LCGB unions, on the one hand, and the UEL, on the other hand
Le harcèlement moral se produit lorsqu'une personne relevant de l'entreprise commet envers un travailleur ou un dirigeant des agissements fautifs, répétés et délibérés qui ont pour objet ou pour effet: soit de porter atteinte à ses droits ou à sa dignité; soit d'altérer ses conditions de travail ou de compromettre son avenir professionnel en créant un environnement intimidant, hostile, dégradant, humiliant ou offensant; soit d'altérer sa santé physique ou psychique.	
Moral harassment occurs when a person within the company commits wrongful, repeated and deliberate acts against a worker or manager that have as their object or effect: to violate his or her rights or dignity; or to alter his working conditions or compromise his professional future by creating an intimidating, hostile, degrading, humiliating or offensive environment; or to alter his physical or mental health.	
MEXICO	Art. 3o. bis. Ley Federal del Trabajo Art. 3o. bis. Federal Labour Law
Hostigamiento: el ejercicio del poder en una relación de subordinación real de la víctima frente al agresor en el ámbito laboral, que se expresa en conductas verbales, físicas o ambas; Acoso sexual: una forma de violencia en la que, si bien no existe la subordinación, hay un ejercicio abusivo del poder que conlleva a un estado de indefensión y de riesgo para la víctima, independientemente de que se realice en uno o varios eventos.	
Bullying: the exercise of power in a relationship of real subordination of the victim in relation to the aggressor in the workplace, which is expressed in verbal conduct, physical or both; Sexual harassment: a form of violence in which, although there is no subordination, there is an abusive exercise of power that leads to a state of helplessness and risk for the victim, regardless of whether this occurs in one or more events.	
NEW CALEDONIA (FRANCE)	Art. 114-1 Code du Travail Art. 114-1 Labour Code
Harcèlement moral au travail: Sont constitutifs de harcèlement moral et interdits les agissements répétés à l'encontre d'une personne, ayant pour objet une dégradation de ses conditions de travail susceptible de porter atteinte à ses droits et à sa dignité, d'altérer sa santé physique ou mentale, ou de compromettre son avenir professionnel. Ces dispositions s'entendent sans préjudice des dispositions du titre III du livre I du code du travail en application desquelles l'employeur détient un pouvoir de direction et de sanction, dans l'exercice normal de son pouvoir disciplinaire.	

Moral harassment at work Repeted acts against a person, the purpose of which is to deteriorate his or her working conditions and are likely to affect his or her rights and dignity, to alter his or her physical or mental health or to compromise his or her professional future, shall constitute psychological harassment and be prohibited. These provisions are without prejudice to the provisions of Title III of Book I of the Labour Code, pursuant to which the employer has the power to direct and sanction [workers], in the normal exercise of his disciplinary power.	
NEW ZEALAND	Section 3 Harassment Act 1997
Meaning of harassment (1) For the purposes of this Act, a person harasses another person if he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months. (2) To avoid any doubt,— (a) the specified acts required for the purposes of subsection (1) may be the same type of specified act on each separate occasion, or different types of specified acts: (b) the specified acts need not be done to the same person on each separate occasion, as long as the pattern of behaviour is directed against the same person. (3) For the purposes of this Act, a person also harasses another person if — (a) he or she engages in a pattern of behaviour that is directed against that other person; and (b) that pattern of behaviour includes doing any specified act to the other person that is one continuing act carried out over any period. (4) For the purposes of subsection (3), continuing act includes a specified act done on any one occasion that continues to have effect over a protracted period (for example, where offensive material about a person is placed in any electronic media and remains there for a protracted period). See also Section 62 (on sexual harassment) and 63 (on racial harassment) Human Rights Act 1993	
NORWAY	Section 13 Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven) Section 13 Act relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act)
Trakassering på grunn av forhold som nevnt i § 6 første ledd og seksuell trakassering, er forbudt. Med trakassering menes handlinger, unnlater eller ytringer som har som formål eller virkning å være krenkende, skremmende, fiendtlige, nedverdiggende eller ydmykende. Med seksuell trakassering menes enhver form for uønsket seksuell oppmerksomhet som har som formål eller virkning å være krenkende, skremmende, fiendtlig, nedverdiggende, ydmykende eller plagsom. Forbudet omfatter trakassering på grunn av eksisterende, antatte, tidligere eller fremtidige forhold som nevnt i § 6 første ledd. Forbudet gjelder også hvis en person blir trakassert på grunn av sin tilknytning til en annen person, og trakasseringen skjer på grunn av forhold som nevnt i § 6 første ledd. Arbeidsgivere og ledelsen i organisasjoner og utdanningsinstitusjoner skal innenfor sitt ansvarsområde forebygge og forhindre trakassering og seksuell trakassering.	
Harassment on the basis of factors specified in section 6, first paragraph, and sexual harassment, are prohibited. «Harassment» means acts, omissions or statements that have the purpose or effect of being offensive, frightening, hostile, degrading or humiliating. «Sexual harassment» means any form of unwanted sexual attention that has the purpose or effect of being offensive, frightening, hostile, degrading, humiliating or troublesome. The prohibition covers harassment on the basis of actual, assumed, former or future factors specified in section 6, first paragraph. The prohibition also applies if a person is harassed on the basis of his or her connection with another person, when such harassment is based on factors specified in section 6, first paragraph. [Those factors are:] Discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors is prohibited. «Ethnicity» includes national origin, descent, skin colour and language. For translation see: https://lovdata.no/dokument/NLE/lov/2017-06-16-51 [Sept. 2019].	
PORTUGAL	Art. 29 Código do Trabalho Art. 29 Labour Code

Assédio 1 - É proibida a prática de assédio. 2 - Entende-se por assédio o comportamento indesejado, nomeadamente o baseado em fator de discriminação, praticado aquando do acesso ao emprego ou no próprio emprego, trabalho ou formação profissional, com o objetivo ou o efeito de perturbar ou constranger a pessoa, afetar a sua dignidade, ou de lhe criar um ambiente intimidativo, hostil, degradante, humilhante ou desestabilizador. 3 - Constitui assédio sexual o comportamento indesejado de caráter sexual, sob forma verbal, não verbal ou física, com o objetivo ou o efeito referido no número anterior. 4 - A prática de assédio confere à vítima o direito de indemnização, aplicandose o disposto no artigo anterior. 5 - A prática de assédio constitui contraordenação muito grave, sem prejuízo da eventual responsabilidade penal prevista nos termos da lei. 6 - O denunciante e as testemunhas por si indicadas não podem ser sancionados disciplinarmente, a menos que atuem com dolo, com base em declarações ou factos constantes dos autos de processo, judicial ou contraordenacional, desencadeado por assédio até decisão final, transitada em julgado, sem prejuízo do exercício do direito ao contraditório.	
Harassment 1. The practice of harassment is prohibited. 2. Harassment is defined as undesirable behaviour, in particular when based on one or more discriminatory factors, undertaken during access to or as part of employment, at work or during vocational training, with the objective or effect of disturbing or constraining individuals, affecting their dignity or creating an intimidating, hostile, degrading, humiliating or destabilising environment. 3. Sexual harassment consists in unwanted sexual behavior, in a verbal, nonverbal or physical form, with the purpose or effect referred to in the preceding paragraph. 4. The practice of harassment gives the victim the right to compensation, pursuant to the provisions of the previous article. 5. The practice of harassment constitutes a very serious misconduct, without prejudice to any criminal responsibility provided for under the law. 6. The persons who denounces and the witnesses indicated by them cannot be sanctioned disciplinarily, unless they act maliciously, on the basis of any statement or facts which appear in any proceeding, be it judicial or administrative, concerning harassment until a final decision is reached, without prejudice to the exercise of the right to be heard. Translation is in part based on: http://hudoc.esc.coe.int/eng?i=2014/def/PRT/26/2/EN [Sept. 2019].	
QUEBEC (CANADA)	81. 18 Loi sur les normes du travail 81.18. Act respecting labour standards
Pour l'application de la présente loi, on entend par « harcèlement psychologique » une conduite vexatoire se manifestant soit par des comportements, des paroles, des actes ou des gestes répétés, qui sont hostiles ou non désirés, laquelle porte atteinte à la dignité ou à l'intégrité psychologique ou physique du salarié et qui entraîne, pour celui-ci, un milieu de travail néfaste. Pour plus de précision, le harcèlement psychologique comprend une telle conduite lorsqu'elle se manifeste par de telles paroles, de tels actes ou de tels gestes à caractère sexuel. Une seule conduite grave peut aussi constituer du harcèlement psychologique si elle porte une telle atteinte et produit un effet nocif continu pour le salarié. For the purposes of this Act, "psychological harassment" means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee. For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment. For translation see: http://legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1 [Sept. 2019].	
REPUBLIC OF KOREA	Art. 76-2 Labour Standards Act, as amended by Act No. 16270 of 15 January 2019
Article 76-2 (Prohibition against Workplace Harassment) No employer or employee shall cause physical or mental suffering to other employees or deteriorate the work environment beyond the appropriate scope of work by taking advantage of superiority in rank, relationship, etc. in the workplace (hereinafter referred to as "workplace harassment"). For this translation see: http://www.moel.go.kr/english/poli/poliNewsnews_view.jsp?idx=1506 [Sept. 2019].	
SASKATCHEWAN (CANADA)	3-1(1) The Saskatchewan Employment Act
(I) "harassment" means any inappropriate conduct, comment, display, action or gesture by a person: (i) that either: (A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or (B) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and (ii) that constitutes a threat to the health or safety of the worker;	
SERBIA	Artt. 3 and 6 Zakon o sprecavanju zlostavljanja na radu Artt. 3 and 6 Law on the Prevention of Harassment at Work
Zlostavljanje, u smislu ovog zakona, jeste svako aktivno ili pasivno ponašanje prema zaposlenom ili grupi zaposlenih kod poslodavca koje se ponavlja, a koje za cilj ima ili predstavlja povredu dostojanstva, ugleda, ličnog i profesionalnog integriteta, zdravlja, položaja zaposlenog i koje izaziva strah ili stvara neprijateljsko, ponižavajuće ili uvredljivo okruženje, pogoršava uslove rada ili dovodi do toga da se zaposleni izoluje ili na-vede da na sopstvenu inicijativu raskine radni odnos ili otkaže ugovor o radu ili drugi ugovor. Zlostavljanje, u smislu ovog zakona, jeste i podsticanje ili navođenje drugih na ponašanje iz stava 1. ovog člana. Izvršiocem zlostavljanja smatra se poslodavac sa svojstvom fizičkog lica ili odgovorno lice kod poslodavca sa svojstvom pravnog lica, zaposleni ili grupa zaposlenih kod poslodavca, koji vrši zlostavljanje iz st. 1. i 2. ovog člana.	

Abuse, within the meaning of this law, is any active or passive behaviour towards an employee or a group of employees of a repetitive nature with an employer which presents violation of the dignity, reputation, personal and professional integrity, health, position of an employee which creates fear or produces a hostile, humiliating or offensive environment that aggravates the working conditions or leads to the isolation of employees or indicates termination of their employment on their own initiative or cancelation of a contract of employment or any other contract. Abuse, within the meaning of this law, is also encouraging or instigating others to conduct in a way referred to in paragraph 1 of this article. The abuser is considered to be an employer with the status of a natural person or a responsible person working at the employer with the status of a legal person, employee or group of employees with an employer who performs the abuse referred to in paragraph 1. and 2. of this Article. The provisions of this law shall also apply to cases of sexual harassment, in accordance with the law governing the work. (The translation of the definition in the Serbian act has been verified by a professional translator.)	
SINGAPORE	Section 3 Protection from Harassment Act 2014
3. –(1) No person shall, with intent to cause harassment, alarm or distress to another person, by any means – (a) use any threatening, abusive or insulting words or behaviour; or (b) make any threatening, abusive or insulting communication, thereby causing that other person or any other person (each referred to for the purposes of this section as the victim) harassment, alarm or distress.	
SLOVAKIA	Section 2a Zákon o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) Section 2a Act on Equal Treatment in Certain Areas and on Protection Against Discrimination and on Amendments to Certain Acts (Anti-Discrimination Act)
Obťažovanie je také správanie, v dôsledku ktorého dochádza alebo môže dôjsť k vytváraniu zastrašujúceho, nepriateľského, zahanbujúceho, ponižujúceho, potupujúceho, zneuctujúceho alebo urážajúceho prostredia a ktorého úmyslom alebo následkom je alebo môže byť zásah do slobody alebo ľudskej dôstojnosti. Harassment is the behavior that causes or may be created by an intimidating, hostile, embarrassing, degrading, disgraceful, abusive or offensive environment, and which is, or may be, an intent or consequence of interfering with freedom or human dignity. For an alternative translation see: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68611/77169/F1638461182/SVK68611.pdf [Sept. 2019].	
SLOVENIA	Art. 6(a) zakon o spremembah in dopolnitvah zakona o delovnih razmerjih (zdr-a) Art. 6(a) the Law on Amending and Supplementing the Employment Relationships Act (ZDZ)
(1) Prepovedano je spolno in drugo nadlegovanje. Spolno nadlegovanje je kakršna koli oblika neželenega verbalnega, neverbalnega ali fizičnega ravnanja ali vedenja spolne narave z učinkom ali namenom prizadejati dostojanstvo osebe, zlasti kadar gre za ustvarjanje zastraševalnega, sovražnega, ponižujočega, sramotilnega ali žaljivega okolja. Nadlegovanje je vsako neželeno vedenje, povezano s katero koli osebno okoliščino, z učinkom ali namenom prizadejati dostojanstvo osebe ali ustvariti zastraševalno, sovražno, ponižujoče, sramotilno ali žaljivo okolje. (4) Prepovedano je trpinčenje na delovnem mestu. Trpinčenje na delovnem mestu je vsako ponavljajoče se ali sistematično, graje vredno ali očitno negativno in žaljivo ravnanje ali vedenje, usmerjeno proti posameznim delavcem na delovnem mestu ali v zvezi z delom Harassment is defined as any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. Workplace mobbing is defined as any repeated or systematic wrong or clearly negative and offensive treatment or behaviour directed at individual workers at the workplace or in connection with work. This translation is based on the finding of the European Committee on Social Rights: http://hudoc.esc.coe.int/eng?i=2014/def/SVN/26/2/EN [Sept. 2019].	
SPAIN	Art. 4 Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores. WORKERS' STATUTE. Approves the Consolidated Text of the Law on the Workers' Statute Art. 7 Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres
Artículo 4. Derechos laborales 1. Los trabajadores tienen como derechos básicos, con el contenido y alcance que para cada uno de los mismos disponga su específica normativa, los de: e) Al respeto de su intimidad y a la consideración debida a su dignidad, comprendida la protección frente al acoso por razón de origen racial o étnico, religión o convicciones, discapacidad, edad u orientación sexual, y frente al acoso sexual y al acoso por razón de sexo Artículo 7. Acoso sexual y acoso por razón de sexo 1. Sin perjuicio de lo establecido en el Código Penal, a los efectos de esta Ley constituye acoso sexual cualquier comportamiento, verbal o físico, de naturaleza sexual que tenga el propósito o produzca el efecto de atentar contra la dignidad de una persona, en particular cuando se crea un entorno intimidatorio, degradante u ofensivo. 2. Constituye acoso por razón de sexo cualquier comportamiento realizado en función del sexo de una persona, con el propósito o el efecto de atentar contra su dignidad y de crear un entorno intimidatorio, degradante u ofensivo. 3. Se considerarán en todo caso discriminatorios el acoso sexual y el acoso por razón de sexo. 4. El condicionamiento de un derecho o de una expectativa de derecho a la aceptación de una situación constitutiva de acoso sexual o de acoso por razón de sexo se considerará también acto de discriminación por razón de sexo.	

Article 4. Labour Rights

1. Workers have the basic right to the following, along with the content and scope provided for by specific regulations for each item:

e) To respect for their privacy and consideration for their dignity, including protection against harassment by reason of racial or ethnic origin, religion or convictions,

handicaps, age or sexual orientation, and against sexual and sexist harassment.

For this translation see: http://www.juntadeandalucia.es/empleo/anexos/estatico/1_571_0.pdf [Sept. 2019].

Article 7. Sexual harassment and harassment based on sex

1. Without prejudice to the provisions of the Criminal Code, for the purposes of this Act, sexual harassment is any conduct, verbal or physical, of a sexual nature that has the purpose or produces the effect of violating the dignity of a person, in particular when an intimidating, degrading or offensive environment is created.

2. Sexual harassment is any conduct based on the sex of a person with the purpose or effect of violating the dignity of that person and creating an intimidating, degrading or offensive environment.

3. Sexual harassment and harassment on grounds of sex shall in all cases be deemed discriminatory.

4. The conditioning of a right or expectation of a right to the acceptance of a situation constituting sexual harassment or harassment on grounds of sex shall also be considered an act of discrimination on grounds of sex.

SWEDEN

Section 4 Arbetsmiljöverkets föreskrifter om organisatorisk och social arbetsmiljö samt allmänna råd om tillämpningen av föreskrifterna (AFS 2015:4)

Section 4 Organisational and social work environment (AFS 2015:4Eng), provisions

Handlingar som riktas mot en eller flera arbetsling tagare på ett kränkande sätt och som kan leda till ohälsa eller att dessa ställs utanför arbetsplatsens gemenskap.

Victimization means actions directed against one or more employees in an abusive manner, which could lead to ill health or their being placed outside the community of the workplace.

For this translation see: <https://www.av.se/globalassets/filer/publikationer/foreskrifter/engelska/organisational-and-social-work-environment-afs2015-4.pdf> [Sept. 2019].

UNITED KINGDOM

Section 26-27 Equality Act 2010

26 Harassment

(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of –

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if –

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if –

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are –

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

VENEZUELA

Art. 56 Ley orgánica de prevención, condiciones y medio ambiente de trabajo 2005

Art. 56 Organic Law on Prevention, Working Conditions and the Working Environment 2005

Son deberes de los empleadores y empleadoras, adoptar las medidas necesarias para garantizar [...] A tales efectos deberán: [...]

5. Abstenerse de realizar, por si o por sus representantes, toda conducta ofensiva, maliciosa, intimidatoria y de cualquier acto que perjudique psicológica o moralmente a los trabajadores y trabajadoras, prevenir toda situación de acoso por medio de la degradación de las condiciones y ambiente de trabajo, violencia física o psicológica, aislamiento o por no proveer una ocupación razonable al trabajador o la trabajadora de acuerdo a sus capacidades y antecedentes y evitar la aplicación de sanciones no claramente justificadas o desproporcionadas y una sistemática e injustificada crítica contra el trabajador o la trabajadora, o su labor. [...]

It is the duty of employers to take the necessary measures to ensure [...] To this end, they shall: [...]

5. Refrain from engaging in any offensive, malicious, intimidating or any act that psychologically or morally harms workers, preventing all situations of harassment through the degradation of conditions and conditions.

In the case of a worker who has been subjected to violence in the workplace, risky or psychological violence, isolation or failure to provide a reasonable occupation to the worker in accordance with his or her abilities and background, and to avoid the application of sanctions that are not clearly justified or disproportionate, and systematic and unjustified criticism of the worker or his or her work. [...]

WASHINGTON (USA)

Section 9A. 46.110. Washington Criminal Code. As referred to in 296-135-010. Washington Administrative Code.

- (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
- (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
 - (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
 - (c) The stalker either:
 - (i) Intends to frighten, intimidate, or harass the person; or
 - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

PART II: Examples of regulatory provisions concerning unacceptable behaviours perpetrated by means of ICT tools

JURISDICTION:	ACT:
<u>NEW JERSEY (USA)</u>	Title 2C New Jersey Code of Criminal Justice 2014 New Jersey Revised Statutes Section 2 of New Jersey Anti-Bullying Bill of Rights Act
A) 2C:33-4.1 Crime of cyber-harassment 1. a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person: (1) threatens to inflict injury or physical harm to any person or the property of any person; (2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or (3) threatens to commit any crime against the person or the person's property. B) C.18A:37-14 Definitions relative to adoption of harassment and bullying prevention policies "Electronic communication" means a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager; "Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that: a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; b. has the effect of insulting or demeaning any student or group of students; or c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.	
<u>NEW ZEALAND</u>	Section 4 Harmful Digital Communications Act 2015
Subpart 1- Interpretation (4) digital communication— (a) means any form of electronic communication; and (b) includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically harm means serious emotional distress Subpart 2- Offences (22) Causing harm by posting digital communication (1) A person commits an offence if— (a) the person posts a digital communication with the intention that it cause harm to a victim; and (b) posting the communication would cause harm to an ordinary reasonable person in the position of the victim; and (c) posting the communication causes harm to the victim.	
<u>NORTH CAROLINA (USA)</u>	Art. 60 of Chapter 14 and art. 29C of Chapter 115C in the General Statutes

"§ 14-458.2. Cyber-bullying of school employee by student; penalty

(b) Except as otherwise made unlawful by this Article, it shall be unlawful for any student to use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a school employee, do any of the following:

- a. Build a fake profile or Web site.
- b. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a school employee.
- c. Post a real or doctored image of the school employee on the Internet.
- d. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a pass-word-protected account or stealing or otherwise accessing passwords.
- e. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a school employee.

(2) Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a school employee.

(3) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a school employee for the purpose of intimidating or tormenting that school employee (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(4) Sign up a school employee for a pornographic Internet site with the intent to intimidate or torment the employee.

(5) Without authorization of the school employee, sign up a school employee for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the school employee.

Article 29C of Chapter 115C

"§ 115C-407.15. Bullying and harassing behavior.

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

(1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or

(2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

(b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.

(d) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

(e) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official.

NOVA SCOTIA (CANADA)

Section 3 Intimate Images and Cyber-Protection Act 2017

(c) "cyber-bullying" means an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual's health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being or was reckless with regard to the risk of harm to another individual's health or well-being, and may include

- (i) creating a web page, blog or profile in which the creator assumes the identity of another person,
- (ii) impersonating another person as the author of content or a message,
- (iii) disclosure of sensitive personal facts or breach of confidence,
- (iv) threats, intimidation or menacing conduct,
- (v) communications that are grossly offensive, indecent, or obscene,
- (vi) communications that are harassment,
- (vii) making a false allegation,
- (viii) communications that incite or encourage another person to commit suicide,
- (ix) communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the Human Rights Act, or
- (x) communications that incite or encourage another person to do any of the foregoing;

PAKISTAN

Section 21 Prevention of Electronic Crimes Act 2016

Cyber stalking

(1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication to -

- (a) follow a person or contacts or attempts to contact such a person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
- (b) monitor the use by a person of the Internet, electronic mail, text message or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.

UTAH (USA)

§ 53G-9-601 Utah Code

Definitions

(2) "Bullying" means a school employee or student intentionally committing a written, verbal, or physical act against a school employee or student that a reasonable person under the circumstances should know or reasonably foresee will have the effect of:

- (a) causing physical or emotional harm to the school employee or student;
- (b) causing damage to the school employee's or student's property;
- (c) placing the school employee or student in reasonable fear of:
 - (i) harm to the school employee's or student's physical or emotional well-being; or
 - (ii) damage to the school employee's or student's property;
- (d) creating a hostile, threatening, humiliating, or abusive educational environment due to:
 - (i) the pervasiveness, persistence, or severity of the actions; or
 - (ii) a power differential between the bully and the target; or
- (e) substantially interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities, or benefits.

(3) "Communication" means the conveyance of a message, whether verbal, written, or electronic.

(4) "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

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